



**Citation: Upright Motors & Logistics Inc., Bethram Aneke v. Registrar, *Motor Vehicle Dealers Act, 2002*, 2023 ONLAT 14713 MVDA**

**Licence Appeal Tribunal File Number: 14713 MVDA**

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

Between:

**Upright Motors & Logistics Inc. o/a Upright Motors & Logistics and Bethram Aneke**

**Appellants**

and

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

**Respondent**

**DECISION**

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

**APPEARANCES:**

For the Appellant: Matthew Tubie and Bolanle Akinnusi, Counsel

For the Respondent: Rishi Nageshar, Counsel

**HEARD: October 11, 12, 13, 23, 2023**

## OVERVIEW

- [1] Upright Motors & Logistics Inc. o/a Upright Motors & Logistics (the “Dealer”) and Bethram Aneke (“Mr. Aneke”) (collectively the “appellants”) appeal from the Notice of Proposal to Revoke Registration dated February 22, 2023 (“NOP”) issued by the Registrar (“Registrar”) under the *Motor Vehicle Dealers Act, 2002*, (“Act”) to revoke the registration of the Dealer as a motor vehicle dealer under s. 6(1)(d)(iii) of the Act and the registration of Mr. Aneke as a motor vehicle salesperson under s. 6(1)(a)(ii) the Act.
- [2] The NOP is based on the grounds that the past conduct of Mr. Aneke, by falsely representing odometer readings on three vehicles, failing to maintain records, and failing to disclose material facts on bills of sale, is inconsistent with the intention and objective of the Act and therefore warrants his, as well as the Dealer’s, disentitlement to registration under the Act. Mr. Aneke is the Dealer’s sole director, officer and manager. The NOP gives notice that the Registrar may provide further and other particulars and further grounds for refusal/revocation/suspension of registration and the respondent issued Notices of Further and Other Particulars dated August 18 and August 24, 2023.

## ISSUES

- [3] The issues to be decided in this hearing are:
1. Has the Registrar established that Mr. Aneke’s past conduct, both personally and as the sole officer, director and manager of the Dealer, affords reasonable grounds for belief that the appellants will not carry on business in accordance with law and with integrity and honesty which disentitles them to registration pursuant to ss. s. 6(1)(d)(iii) and 6(1)(a)(ii) of the Act.

2. If so, is revocation of the licences of the Dealer and/or Mr. Aneke as a motor vehicle salesperson appropriate?

## **RESULT**

- [4] Having considered all of the evidence, and for the reasons that follow, I order the respondent to carry out the NOP.

## **THE LAW**

### ***The Act***

- [5] Section 6(1)(d)(iii) of the Act provides that a corporation that meets the prescribed requirements is entitled to registration unless the past conduct of its officers, directors or interested person affords reasonable grounds for belief that its business will not be carried on in accordance with law and with integrity and honesty.
- [6] Section 6(1)(a)(ii) of the Act provides that a person other than a corporation that meets the prescribed requirements is entitled to registration unless the past conduct of the applicant affords reasonable grounds for belief that the applicant will not carry on business in accordance with law and with integrity and honesty.
- [7] Section 9(1)(a) provides that the Registrar must provide written notice of the proposed refusal and the applicant may request a hearing by the Tribunal pursuant to section 9(2).
- [8] Section 9(5) provides that the Tribunal shall hold the hearing and following the hearing, may direct the Registrar to carry out the proposal or substitute its opinion for that of the Registrar and the Tribunal may attach conditions to its order.

[9] The onus is on the Registrar to establish the grounds alleged in the NOP.

## **ANALYSIS**

***Issue 1: Has the Registrar established that Mr. Aneke's past conduct, both personally and as the sole officer, director and manager of the Dealer, affords reasonable grounds for belief that the appellants will not carry on business in accordance with law and with integrity and honesty***

[10] For the following reasons, I find that the past conduct of Mr. Aneke affords reasonable grounds for belief that the appellants will not carry on business in accordance with law and with integrity and honesty because he caused the Dealer to falsely represent odometer readings on three vehicles, to fail to maintain records, and to fail to disclose material facts on bills of sale.

### **The Dealer Failed to Maintain Records**

[11] Based on the admissions of the appellant, I find that the Dealer, under the direction of Mr. Aneke failed to maintain records as alleged in paragraphs 28 through 33 of the NOP. At the hearing the appellants confirmed through their counsel that they admitted the following facts:

Para 28. On or about March 22, 2019, the ownership of a 2013 Honda Civic (VIN: 2HGF2F47DH020503) was transferred to the Dealer.

Para 29. On or about the same date, the Dealer transferred the ownership of this vehicle to a consumer.

Para 30. Between on or about August 21, 2019 and September 12, 2019, an inspector conducted an inspection of the Dealer's books and

records. During the inspection, the inspector requested the Dealer to produce the records related to the 2013 Honda Civic.

Para 31. The Dealer failed to produce to the inspector any records related to the trade of this vehicle.

Para 32. The Dealer contravened its obligation to retain records relating to motor vehicles and trades, as required by s. 52, 25 and/or 56 of Regulation 333/08.

Para 33. On or about November 23, 2021, the Dealer and Mr. Aneke were each charged under s. 53 of the Act for failing to maintain records related to the above-mentioned vehicle. These charges are currently pending before the courts.

[12] Marc Duval, OMVIC's manager of investigations, testified that it is concerning that the appellant could not produce any records for the Honda Civic.

### **The Dealer Falsely Represented Odometer Readings on Three Vehicles**

[13] I find that the Dealer, under the direction of Mr. Aneke, falsely represented the odometer readings on the three vehicles for the following reasons.

[14] On two occasions in August and September of 2019, the respondent's inspectors Marcella Coellar and Erica Morrison conducted inspections of the Dealer's books and records. Ms. Coellar, manager of inspections, had various communications with Mr. Aneke, and made a report detailing concerns about missing documents, discrepancies in document and non-disclosure of material facts concerning the trades of several vehicles. Ms. Coellar also found that Mr. Aneke and the Dealer used abbreviations and short forms on documents which might not be clear to a consumer.

- [15] Ms. Coellar testified that concerns arose following the inspection because it was apparent that the Dealer, directed by Mr. Aneke, was not in compliance with several sections of the Act. Bills of sale and documents were not provided for a 2013 Honda Civic, odometer readings recorded on bills of sale for vehicles sold by the Dealer were significantly less than on the odometer history found on Carfax Canada reports and Ministry of Transportation (“MTO”) records. The odometer readings for several vehicles seemed to indicate that odometer readings had been tampered with and rolled back, which would directly impact and the increase the value and misrepresent the true value of vehicles.
- [16] Ms. Coellar testified that Mr. Aneke told her he only gets a Carfax report to check the history of a vehicle, he believes previous owners gave incorrect odometer readings to the MTO, and he told Ms. Coellar that he has never bought a vehicle which has a broken odometer or cluster. Ms. Coellar testified that during the course of past inspections, Mr. Aneke has been educated about odometer readings and the importance of material fact disclosures and informed that “unknown” kilometers is not sufficient disclosure. Ms. Coellar testified that Mr. Aneke told her that he registers ownership of a newly purchased vehicle right away, before taking the vehicle to a mechanic. Ms. Coellar testified that she does not recall any discussions with Mr. Aneke about whether he replaced odometers in vehicles before re-selling them and likely there were none, because she has nothing about odometer repairs in her notes. If there had been repair or replacement of odometers, the Dealer has the onus to let her know that and what vehicles were involved.
- [17] As a result of concerns arising from the inspection, the matter was referred for investigation to Blake Smiley, the respondent’s investigator for 13 years and a former police investigator of 31 years. Mr. Smiley testified that Mr. Aneke is the director or owner of the Dealer.

[18] Mr. Smiley testified about the searches and resulting review of MTO records, his review of Ms. Coellar's inspection records, bills of sale and other deal records, interviews with the former owners of three vehicles, Henry Imadojemu, Reece Kettle and Amanda Schofield and documents relating to their former vehicles, the Lexus, Chrysler and Nissan. At the conclusion of his investigation Mr. Smiley testified that he believed the odometers on all three vehicles had been rolled back or altered in order to make the vehicles more marketable and that the bills of sale of the three vehicles and documents of registration with the MTO were falsified and furnished with altered odometer readings and that the sale documents to consumers had also been falsified.

[19] Mr. Aneke admitted that he purchased all three vehicles with the higher mileage on the odometer recorded by the MTO and as described by the three previous owners. Mr. Aneke admitted that when he registered the Dealer's ownership of all three vehicles, he reported lower mileage to the MTO than the mileage when he purchased the three vehicles. Mr. Aneke admitted that he replaced the odometers on all three vehicles prior to selling them to consumers. Mr. Aneke admitted that the Dealer's bills of sale to the consumers for all three vehicles showed the mileage he put on the bills of sale, which is at odds with the mileage reported by the former owners to the MTO, recorded by the MTO and described in the testimony of the former owners.

[20] A summary of the testimony of all witnesses for each vehicle follows:

### **2007 Lexus ES350 ("Lexus")**

[21] Henry Imadojemu testified that he was the owner of the Lexus until he sold it in February, 2019 to Mr. Aneke with an excess of 250,000 kilometers showing on the odometer. Mr. Aneke used the fact that the mileage on the Lexus was high

to get a reduced price from Mr. Imadojemu and told him that he was going to fix the Lexus for his daughter to drive to school.

- [22] Mr. Imadojemu testified that there was no problem with the Lexus's odometer or display at the time of sale although the panoramic sunroof was leaking and that is why he wanted to sell it.
- [23] Mr. Imadojemu testified that about a week later he was on the Kijiji website and saw the Lexus advertised with misleading information about the kilometers driven and its condition. The kilometres advertised by the Dealer was way below what it really was and the Lexus was described as being in perfect condition. Mr. Imadojemu asked Mr. Aneke to take down the advertisement for the Lexus. Mr. Aneke told him to mind his own business. Mr. Imadojemu went to the police but they told him that only OMVIC can deal with this. Mr. Imadojemu testified that a few days later Mr. Aneke removed the Lexus advertisement from Kijiji.
- [24] Mr. Smiley testified that his investigation revealed that Mr. Imadojemu was the former owner of the Lexus who sold it to the Dealer. In August, 2018 the odometer reading was recorded by the MTO as 217,916 kilometers based on information that Mr. Imadojemu was required to provide to the MTO. When the Lexus was transferred from Mr. Imadojemu to the Dealer, on February 11, 2019, the odometer reading was recorded by the MTO as 189,780 kilometers based on information that Mr. Aneke was required to provide to the MTO. On March 1, 2019, the Dealer's bill of sale to Nathaniel Okoroafor showed 189,780 kilometers. Mr. Smiley testified that this is false information because it is not the true distance travelled by the Lexus. Based on his review of the MTO and other records provided, Mr. Smiley estimated the odometer had been rolled back or altered to make the vehicle more marketable by some 60,000 kilometers.



- [25] Mr. Aneke admitted at the hearing that the Lexus's odometer reading was 217,906 kilometers, but would not admit it was higher than that, when he purchased it for \$4,000.00. Mr. Aneke said that a pastor test-drove the Lexus and told him the odometer was not moving. Mr. Aneke took the Lexus to his mechanic who replaced the odometer. Mr. Aneke testified that the replacement of the odometer made it difficult to determine the true odometer reading and that is why he reported only 189,780 kilometers to the MTO.
- [26] After some repairs, Mr. Aneke advertised the Lexus on Kijiji for \$7,500.00. Mr. Aneke also admitted that he put 189,780 kilometers on the bill of sale to the consumer who bought the Lexus from him.
- [27] George Fogap, a prospective purchaser of the Lexus testified that on a test drive of the Lexus, his acquaintance who was driving the vehicle, told him the odometer was not working. Mr. Fogap, who does not have a driver's licence, testified that he observed this also from the passenger seat. Mr. Fogap's testimony was not specific. He could not recall when this occurred, except that it was "early 2019", he did not testify as to the odometer reading at the time he said it wasn't working and had no documentation to support his testimony. I give Mr. Fogap's evidence little weight.

### **2010 Chrysler Town & Country ("Chrysler")**

- [28] Reece Kettle testified that he was a joint owner of the Chrysler with Alyssia Judith Jean until they sold it to Mr. Aneke in September, 2018 for approximately \$1,000.00. Mr. Kettle had advertised the Chrysler for sale on Kijiji. A photo of the Chrysler's odometer shows 244,855 kilometers at the time of the sale. Mr. Kettle testified that he never had any issues with the Chrysler's odometer during the years he owned it and that the odometer was working when he sold it to the appellants.

- [29] Mr. Smiley testified that his investigation revealed that Jean and Kettle were the former owners of the Chrysler who sold to the Dealer. In September, 2018, the owners took a photograph of the odometer reading to advertise the Chrysler for sale on Kijiji. The photograph shows the odometer reading of 244,885 kilometers. Prior to the sale by Kettle and Jean to the Dealer, the odometer reading was recorded by the MTO as 237,175 kilometers based on information that the former owners were required to provide to the MTO. When the Chrysler was transferred from Kettle and Jean to the Dealer on October 3, 2018, the odometer reading was recorded by the MTO as 189,580 kilometers based on information that Mr. Aneke provided to the MTO.
- [30] On November 20, 2018, the Dealer's bill of sale to the consumer showed 187,278 kilometers. Mr. Smiley testified that this is false information because it is not the true distance travelled by the Chrysler. Based on his review of the MTO and other records provided, Mr. Smiley estimated the odometer had been rolled back or altered to make the vehicle more marketable by some 57,000 kilometers.
- [31] Mr. Aneke admitted at the hearing that the Chrysler's odometer reading was 237,175 kilometers when he purchased it for \$4,000.00. When shown a photograph of the Chrysler's odometer showing 244,885 kilometers, Mr. Aneke agreed that this is what showed on the odometer before he replaced it with another odometer because he noticed that it was not working. Mr. Aneke took it to his mechanic who replaced the odometer cluster with one that showed 187,278 kilometers. Mr. Aneke reported 187,278 kilometers to the MTO. After some repairs, Mr. Aneke sold the Chrysler to a consumer. Mr. Aneke admitted that he put 187,278 kilometers on the bill of sale to the consumer who bought the Lexus from him.

## **2005 Nissan XTrail (“Nissan”)**

- [32] Amanda Schofield testified that she owned the Nissan until she sold it to Mr. Aneke on July 31, 2018 for \$500.00. Ms. Schofield had advertised the Nissan for sale on Kijiji. Ms. Schofield testified that she never had any issues with the Nissan’s odometer during the years she owned it and that the odometer was working when she sold it to Mr. Aneke.
- [33] Ms. Schofield documented the odometer reading on her vehicle on the day she sold it to the appellants and she prepared a bill of sale for Mr. Aneke to sign before he drove the vehicle away. Ms. Schofield recorded in the bill of sale that the odometer reading on July 31, 2018 was 227,480 kilometers. Mr. Aneke signed this bill of sale prior to purchasing the vehicle. Ms. Schofield was so concerned about Mr. Aneke purchasing her vehicle for driving that she included statements on the bill of sale indicating it may not even be roadworthy. She testified that she did this because her mechanic had told her it could “fall apart at any moment” and refused to take her money to change the oil it was in such bad shape.
- [34] Mr. Smiley testified that his investigation revealed that in July 2018 Amanda Schofield was the former owner of the Nissan sold to the Dealer. Ms. Schofield recorded the Nissan’s odometer reading as 227,480 kilometers on the July 31, 2018 bill of sale she prepared when she sold the Nissan. Prior to the sale by Ms. Schofield to the Dealer, the odometer reading was recorded by the MTO as 227,290 kilometers based on information that Ms. Schofield was required to provide to the MTO. When the Nissan was transferred from Ms. Schofield to the Dealer on August 1, 2018, the odometer reading was recorded by the MTO as 187,480 kilometers based on information that Mr. Aneke provided to the MTO.

- [35] The September 24, 2018 Dealer's bill of sale to Gordon Wilkins showed 187,480 kilometers. Mr. Smiley testified that this is false information because it is not the true distance travelled by the Chrysler. Based on his review of the MTO and other records provided, Mr. Smiley estimated the odometer had been rolled back or altered to make the vehicle more marketable by some 40,000 kilometers.
- [36] Mr. Aneke admitted at the hearing that when he purchased the Nissan from Amanda Schofield, he signed the bill of sale she had prepared which documents that the odometer reading on July 31, 2018 was 227,480 kilometers. Mr. Aneke admitted that the odometer of the Nissan showed 227,480 kilometers. He purchased the Nissan for \$500.00. Mr. Aneke testified that the odometer cluster that showed 227,480 kilometers was bad and he had to replace it with another. Mr. Aneke took it to his mechanic who replaced the odometer cluster with one that showed 187,480 kilometers. Mr. Aneke reported 187,480 kilometers to the MTO. After some repairs, Mr. Aneke sold the Chrysler to Mr. Wilkins. Mr. Aneke admitted that he put 187,480 kilometers on the bill of sale to Mr. Wilkins.
- [37] Mr. Wilkins testified at the hearing that when he first went to look at the Nissan, it was parked behind a number of vehicles at the back of the Dealer's facility and he was told that he could not test drive it because they couldn't get the vehicle out. Mr. Wilkins later purchased the vehicle and was asked to sign a lot of papers by Mr. Aneke but believed that the mileage was 187,480 kilometers as it said on the bill of sale. Mr. Wilkins testified that Mr. Aneke did not tell him the Nissan's odometer had been altered and would have considered not purchasing the Nissan if he had known the real odometer reading as he didn't want to have a vehicle with over 200,000 kilometers on it.
- [38] All former owners testified that the odometers in their respective vehicles were in working order at the time the appellants purchased their respective vehicles.

- [39] All former owners testified that the distance travelled by their respective vehicles was accurately recorded on the odometers in their respective vehicles at the time the appellants purchased the vehicles.
- [40] Although Mr. Aneke testified at the hearing that the odometers on all three of these vehicles were either broken or working “inconsistently” and all had to be replaced and he believes the previous owners of the vehicles did not give the MTO accurate odometer readings when they owned the vehicles, I do not find Mr. Aneke’s testimony credible on these points. Mr. Aneke gave no details of the alleged mechanical problems with the odometers and/or clusters on all three vehicles. Mr. Aneke described the fact that all three vehicles had problems with the odometers and/or clusters as a coincidence.
- [41] Although Mr. Aneke submits that all three odometers were defective and had to be replaced by his mechanics, there is little evidence to support this. Ms. Coellar testified that he did not tell her about any mechanical issues with the odometers of the Lexus, Chrysler and Nissan when the odometer reading issue up during her inspection of the Dealer. Mr. Aneke admitted at the hearing that he did not tell Ms. Coellar about the three vehicles having broken odometers.
- [42] Mr. Aneke’s testimony that the previous owners did not give the MTO accurate odometer readings is not supported by any evidence and is not credible. All three witnesses denied giving the MTO inaccurate odometer readings—their testimony was not shaken on cross-examination.
- [43] Derek Mitchell, the appellant’s mechanic, testified that he replaced the odometers on the Lexus and Chrysler because there were problems with the odometers and/or clusters. Mr. Mitchell did not have any detailed evidence as to what the problems were with the odometers he replaced and testified that Mr. Aneke purchased the replacement odometer for the Lexus and provided it to him. I find Mr. Mitchell’s testimony that the odometers and/or clusters on the Lexus and Chrysler needed to be replaced to be less credible than that of the former

owners who sold the vehicles to the appellants. As a result, I find as a fact that none of the odometers were malfunctioning on the Lexus, Chrysler and Nissan and none of them needed to be replaced for mechanical reasons.

[44] I prefer the testimony of the former owners over that of Mr. Aneke and Mr. Mitchell on the point about the cars' odometers. None of these witnesses would have any incentive to not tell the truth to Mr. Aneke about the number of kilometers on their odometers as they all relinquished any financial interest in the vehicles to the appellants in exchange for the purchase price paid. Further, the number of kilometers on their odometers is specific and is consistent with the kilometers reported they each reported to the MTO.

[45] Based on the MTO and other records brought forward by the Registrar, taken together with the testimony of all three former owners Henry Imadojemu, Reece Kettle and Amanda Schofield, Mr. Smiley's investigation results, Ms. Coellar's inspection testimony and records, Mr. Wilkins' testimony, and the admissions of Mr. Aneke, I find that the Lexus, Chrysler and Nissan's mileage was reduced by Mr. Aneke on behalf of the Dealer as follows:

VEHICLE ODOMETER AT TIME OF DEALER PURCHASE	MTO RECORDS – BEFORE PURCHASE BY DEALER	MTO RECORDS - BASED ON FALSE REPORTS AFTER PURCHASE BY DEALER	FALSE KILOMETERS ON DEALER'S BILL OF SALE TO CONSUMER
<p><b>LEXUS</b></p> <p>over 250,000 km</p> <p>(per former owner's testimony)</p>	217,916 km	189,780 km	189,780 km

<p><b>CHRYSLER</b></p> <p>244,885 km</p> <p>(per photograph and former owner's testimony)</p>	<p>237,175 km</p>	<p>189,580 km</p>	<p>187,278 km</p>
<p><b>NISSAN</b></p> <p>227,480 km</p> <p>(per former owner's bill of sale and testimony)</p>	<p>227,290 km</p>	<p>187,480 km</p>	<p>187,480 km</p>

[46] The odometers on each of the Lexus, Chrysler and Nissan were significantly decreased prior to sale by the Dealer to consumers.

[47] Accordingly, I find that the Dealer and Mr. Aneke falsified and furnished false information and documents related to these three trades, in contravention of s. 26 and 27 of the Act.

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

[48] In addition to failing to disclose the replacement of the odometers on the three vehicles described above, I also find that Mr. Aneke and the Dealer, under the direction of Mr. Aneke failed to disclose material facts on the bill of sale of a 2011 Kia Soul (the "Kia") to a consumer as required by s. 42(19) of Regulation 333/08 for the following reasons.

[49] Eboni Burrell, a senior resolution support specialist at OMVIC, testified that after receiving a consumer complaint, she corresponded with Mr. Aneke about a bill of

sale of the Kia to the proposed consumer purchaser. After her review of the compliant, she found that Mr. Aneke on behalf of the Dealer failed to disclose that the Kia had been involved in two accidents with damage of over \$10,000.00 each as required by s. 42(19) of the Regulation. Section 42(19) requires that if the total costs of repairs to fix damage to a motor vehicle by an incident exceed \$3,000.00 then a statement to that effect must be made. Mr. Aneke indicated to Ms. Burrell in correspondence that the words "title rebuilt" on the bill of sale was sufficient to full the Dealer's disclosure obligations. At the hearing, Mr. Aneke testified to the same effect. Ms. Burrell testified that Mr. Aneke is not correct and he did not make disclosure to this consumer as required by s. 42(19) of the Regulation which requires that if the total costs of repairs to fix the damage caused to a motor vehicle by an incident exceeds \$3,000.000, a statement to that effect must be made and if the Dealer knew the total costs, a statement of the total costs must be made. This was not done.

[50] Further, during the course of her correspondence with him, Ms. Burrell understood Mr. Aneke to say that because the consumer contacted OMVIC, the Dealer would be pursuing her in court which Ms. Burrell testified is not appropriate because consumers should not be discouraged from contacting OMVIC if they wish to.

[51] Still further, when Ms. Burrell requested that the Dealer refund some more of the consumer's money because the sale was not complete, Mr. Aneke refused to do so. At the hearing Mr. Aneke testified that he has withheld funds from the proposed purchaser of the Kia in case he has future losses on the re-sale of the Kia. I accept the evidence of Ms. Burrell.

[52] Returning to the odometers topic, Mr. Aneke admitted in his cross-examination at the hearing that replacing the odometers on the Lexus, Chrysler and Nissan constitutes a material fact for purposes of disclosure to consumers. However, he testified that he disclosed this to the best of his ability.



- [53] Mr. Aneke testified that he tried to comply with the disclosure obligations by checking a box on the bill of sale which indicates the actual distance travelled may be substantially higher than the odometer reading, noting on the Lexus bill of sale that the “true km is unknown”, on the Chrysler bill of sale that “true kilometre cannot be determined”, on the Nissan bill of sale that there is a “mileage inconsistency reported”, and having consumers initial Carfax reports. Mr. Aneke said he is trying to do better with meeting his disclosure obligations.
- [54] However, Mr. Duval, OMVIC’s manager of investigations, made it clear that Act requires that any replacement of a vehicle’s odometer must be disclosed on the bill of sale when the Dealer sells a vehicle to a consumer after replacing the odometer as required by Regulation 333/08, s. 42(6). Here, none of the bills of sale disclose replacement of the odometer. Mr. Duval testified that the disclosure requirements set out in the Act and Regulation are for consumer protection. A consumer needs to know all material facts about a vehicle, including the odometer reading, whether the odometer has been replaced or rolled back, in order to make an informed decision about whether to purchase a vehicle.
- [55] Because of their past conduct, Mr. Duval testified that there are concerns that the appellants will not carry on business in accordance with the law and with integrity and honesty. Mr. Duval, in cross-examination also confirmed that the test for compliance with the law and acting with integrity and honesty is not that the appellants believed they were complying with the Act and Regulation but whether or not they in fact did and in this case the appellants did not. Mr. Duval testified that when Mr. Aneke checked off a box on a bill of sale, and adding words to the bill of sale in handwriting does not fulfill the requirements of the Act and Regulation because the true material facts have not been given to the consumer. Mr. Duval also noted that the form of bill of sale used by the appellants is not distributed by OMVIC but is a UCDA form, the use of which does not guarantee

that the appellants are in compliance with the legislative requirements. Mr. Duval testified that it is not honest to state the number of kilometers travelled by a vehicle, for example, the Nissan, when the appellants had in their file a bill of sale from the previous owner dated July 31, 2018 stating the actual kilometers travelled before the appellants replaced the odometer. To state otherwise is misleading and creates a huge discrepancy between the actual kilometers travelled and the information the appellants provided to their consumer customer. I accept the evidence of Mr. Duval.

[56] Based on the testimony of Ms. Coellar and Mr. Duval I find the appellants' disclosure activities to fall short of their obligations.

[57] Having reviewed the bills of sale to the three consumers who bought the Lexus, Chrysler and Nissan from the Dealer, I find that there is no written disclosure on any of the three bills of sale that the odometers had been replaced by the Dealer. Showing a prospective consumer a Carfax report and making vague comments on the bill of sale does not constitute written disclosure that the car's odometer had been replaced by the Dealer, a simple fact capable of being described in simple words.

[58] I find that Mr. Aneke and the Dealer, under the direction of Mr. Aneke, engaged in the past conduct described above, specifically falsely representing odometer readings on three vehicles, failing to maintain records, and failing to disclose material facts on bills of sale, is inconsistent with the intention and objective of the Act and therefore warrants his, as well as the Dealer's disentitlement to registration under the Act.

**Issue 2: Is revocation of the licences of the Dealer and/or Mr. Aneke as a motor vehicle salesperson appropriate?**

[59] The past conduct of the appellants, described above, specifically falsely representing odometer readings on three vehicles, failing to maintain records,

and failing to disclose material facts on bills of sale, warrants Mr. Aneke's, as well as the Dealer's disentanglement to registration under the Act. Nothing in the evidence led me to believe that further supervision of either appellant or any other conditions attached to the licences would be appropriate or effective.

- [60] Mr. Aneke submits that he should be allowed to work as a motor vehicle salesperson because he needs to work. It is Mr. Aneke who, as the Dealer's sole director, officer and manager, was the directing mind behind the impugned conduct. Motor vehicle salespersons deal with the public. The actions of Mr. Aneke show that he has little regard for the consumer protection requirements of the legislation.
- [61] The impediment to continued registration of the appellants is the conduct of Mr. Aneke who decided to provide false information about odometer readings to the MTO and to consumers, and to fail to disclose material facts in the bills of sale.
- [62] Mr. Aneke is the sole officer, director and controlling mind of the Dealer and directs and is responsible for the actions of the Dealer. The Registrar has established that Mr. Aneke's past conduct both personally, and in directing the Dealer, has shown that that Mr. Aneke is willing to falsely represent odometer readings and to not comply with the Act as set out above.
- [63] There is ample evidence that affords reasonable grounds for belief that both Mr. Aneke and the Dealer will not carry on business in accordance with law and with integrity and honesty. Nothing in the evidence persuades me that Mr. Aneke personally will carry on business as a motor vehicle salesperson in accordance with the law and with integrity and honesty if conditions were imposed upon him. Although Mr. Aneke testified that he is trying to better, even if that is true, this simply amounts to now saying that he will comply with obligations he has had all along under the Act and its regulations but failed or refused to comply with.

***Conclusion***

[64] The Registrar has established that Mr. Aneke's past conduct, both personally and as the sole officer, director and manager of the Dealer, affords reasonable grounds for belief that the appellants will not carry on business in accordance with law and with integrity and honesty which disentitles them to registration pursuant to ss. s. 6(1)(d)(iii) and 6(1)(a)(ii) of the Act. I order the Registrar to carry out the NOP. Revocation of the registrations of both appellants is appropriate given the conduct of Mr. Aneke in the trade of motor vehicles as found above.

**ORDER**

[65] For the reasons set out above, I order the respondent to carry out the NOP.

**Released:** December 14, 2023

**LICENCE APPEAL TRIBUNAL**



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**Avril A. Farlam**  
Vice-Chair