



Neutral Citation No. 2018-BCRMD-011

**IN THE MATTER OF THE *MOTOR DEALER ACT*, R.S.B.C. 1996, C. 316 and  
*BUSINESS PRACTICE AND CONSUMER PROTECTION ACT* S.B.C. 2004, c. 2**

**TIFFANY PARTIN and HENRY GLASSCO**

Consumer Complainants

**MOTOR VEHICLE SALES AUTHORITY OF BRITISH COLUMBIA**

Complainant

And

**CARMEL CUSTOM CONTRACTING LTD. dba MILL BAY MOTORS**  
(Motor Dealer Registration #40282)

Respondent Dealer

And

**JASON WILLIAM COBURN**  
(Salesperson Licence #106135)

Respondent Salesperson

**DECISION OF THE REGISTRAR OF MOTOR DEALERS**

**Hearing date and location:** April 5, 2018 at Surrey, British Columbia

**Appearances**

Tiffany Partin	<i>Via</i> teleconference
Henry Glassco	<i>Via</i> teleconference
Motor Vehicle Sales Authority of British Columbia	Norm Felix, Manager of Compliance and Investigations
Carmel Custom Contracting Ltd. dba Mill Bay Motors	Marlin Gait, dealer principal and owner via teleconference
Jason William Coburn	No one

## **I. Introduction**

### **A. The consumer transaction and the allegations**

[1] This hearing was called to review a consumer transaction involving Carmel Custom Contracting Ltd. dba Mill Bay Motors, motor dealer registration 40282 ("Mill Bay"), and Jason Coburn, salesperson licence 106135, whereby they agreed to sell a 1992 Gulfstream Sunsport R.V. ("Gulfstream") belonging to Tiffany Partin and Henry (Dave) Glassco (the "Consumers") under a consignment agreement, and to remit to the Consumers, the agreed to sale proceeds (the "Consignment Agreement"). At the time of the hearing, Mill Bay and Mr. Coburn had not provided the Consumers with the full amount of the sale proceeds. The Consumers claimed they were still owed \$4,000.

[2] The following allegations were made against Mill Bay and Jason Coburn in relation to the Consignment Agreement (paraphrased from the Hearing Notice):

- (a) Mill Bay engaged in the Consignment Agreement contrary to a restriction on its registration prohibiting it from conducting consignment sales, in breach of section 4(4) of the *Motor Dealer Act*, R.S.B.C. 1996, c. 316 ("MDA").
- (b) Mill Bay and Jason Coburn entered into the Consignment Agreement, without preparing and providing a written consignment agreement to the Consumers as required by section 2 of the *Motor Dealer Consignment Sales Regulation*, B.C. Reg. 102/95 ("Consignment Regulation").
- (c) Mill Bay and Jason Coburn failed to use a written consignment purchase agreement as required by section 4 of the Consignment Regulation.
- (d) Mill Bill and Jason Coburn failed to process the funds collected from the sale of the Gulfstream in the manner required by section 6 of the Consignment Regulation.
- (e) Mill Bay and Jason Coburn represented to the Consumers that they would sell the Gulfstream and remit the sale proceeds for the Gulfstream to the Consumers and did not remit those proceeds; being a deceptive act or practice contrary to section 5(1) of the *Business Practice and Consumer Protection Act* S.B.C. 2004, c. 2 ("BPCPA").

### **B. Jason Coburn's non-attendance**

[3] At the commencement of the hearing, Mr. Coburn was not in attendance. I recessed the hearing so staff could contact Mr. Coburn to see if he was delayed. When the hearing was reconvened, Mr. Coburn was still not in attendance. I was provided evidence that the phone number he had provided was not in service. I was also provided evidence that Mr. Coburn had been served with the Hearing Notice and the Affidavit of Compliance Officer Chris Coleman, which was intended to be introduced at the hearing. I found Mr. Coburn had been served in accordance with section 30 of the MDA and was deemed to have received the Hearing Notice under section 30.1 of the MDA. I elected to continue the hearing in Mr. Coburn's absence.

[4] During the hearing, Mr. Gait, on behalf of Mill Bay, alluded to having tried to settle this matter the day before the hearing by contacting Mr. Norm Felix. Mr. Gait said he was unsuccessful in contacting Mr. Felix, but Mr. Gait still wanted an opportunity to explore getting Mr. Coburn in the room to see if Mr. Coburn would come to the table and provide the funds to resolve this complaint. I recessed the hearing to allow the parties to discuss a settlement in my absence. When the hearing reconvened, no settlement had been reached. The hearing proceeded, witnesses and the parties were heard; and the parties made closing oral submissions. I reserved my decision.

### **C. Additional submissions after the oral hearing**

[5] The day after the hearing, I was advised that Mr. Gait indicated that he would like to settle the Consumers' monetary claims. I have also been advised that this in fact occurred. Given this new set of facts, I invited the parties to make written submissions for my consideration. I have received those written submissions and considered them in arriving at my decision.

## **II. Position of the Parties**

### **A. The Consumer Complainants**

[6] The Consumers stated that they entered into an oral agreement with Jason Coburn and Mill Bay. The Consumers dealt with Jason Coburn. They agreed to sell their Gulfstream with an understanding that they wanted to receive \$8,000 from its sale. The Gulfstream was eventually sold. Jason Coburn eventually made several payments to the Consumers over time amounting to \$4,000. At the time of the hearing, the Consumers stated they were owed an additional \$4,000. Their evidence was straight forward and not successfully challenged.

[7] At the hearing, the Consumers expressed their frustration with Mr. Gait, speaking for Mill Bay, who seemed to blame Jason Coburn for these issues and not accept responsibility for its employee. Mill Bay seemed to believe that it was not responsible to the Consumers until Mill Bay could secure the required compensation from its employee, Jason Coburn.

### **B. Mill Bay Motors**

[8] Mr. Gait, for Mill Bay, took various positions at the hearing and in his written submission. I summarize and paraphrase them as follows:

- (a) Essentially, there were two dealerships. The dealership that the Consumers dealt with was Jason Coburn's Mill Bay; and Jason Coburn was responsible - not Mr. Gait and his dealership. Mr. Gait says that he shut down Jason's Mill Bay operation in June of 2017.
- (b) The Motor Vehicle Sales Authority of British Columbia is partially to blame for this and Mr. Gait discusses the registration of "Jason's Mill Bay".

- (c) Mill Bay paid the final \$4,000 but the Consumers were only owed \$900. Mill Bay also questions the credibility of the Consumers by stating that the Consumers declared a lesser purchase price for the Gulfstream to avoid taxes.
- (d) Charles List, legal administrative assistant of the Authority, did not properly include certain information in email communications between Mill Bay and the Authority. This, Mr. Gait says, impacted his ability to address these issues early.

### **C. The Motor Vehicle Sales Authority of British Columbia**

[9] The Authority's position can be summarized and paraphrased as follows:

- (a) At all material times, Mill Bay was owned and operated by Marlin Gait's. There was no "Jason Coburn Mill Bay." The position of Mill Bay, and its owner Marlin Gait, indicates a lack of insight into its responsibilities as a motor dealer. This raises governability concerns.
- (b) Mill Bay's attempt to blame others is an attempt to confuse the Registrar.
- (c) The allegations, and Mill Bay's responsibilities to the Consumers, were contained in the Notice of Hearing provided to Mill Bay. It was aware of the issues and could have addressed the Consumer's claim for restitution early if it so wished.
- (d) Mr. Gait's statement that he closed "Jason's Mill Bay" in June 2017 is simply incorrect. The VSA licensing department was communicating with Mr. Gait into July of 2017 about getting the proper documents to licence the location and did not place the dealer into "pending status" until July 24, 2017. Further, VSA compliance officers performed a secret shop of the Mill Bay location in August of 2017 and were able to solicit the purchase of a motor vehicle from Mr. Coburn.
- (e) There is nothing in the documentary evidence regarding \$900 owing to the Consumers. There is a \$900 taxes payable declaration on the ICBC Transfer/Tax Form for the sale of the Gulfstream, with a declared sale price lesser than the actual sale price. However, the evidence shows this document was completed by Mr. Coburn without input from the Consumers.
- (f) Given the dealer's lack of insight, lack of proper supervision of this location, and prior problems with its operation of that location, the Registrar should cancel Mill Bay's Registration. This will not affect the other motor dealer location.
- (g) Mill Bay should be levied an administrative penalty of \$7,000 to deter it and the industry from similar conduct. At the hearing, the Authority suggested \$7,500 but reduced that amount to reflect that Mill Bay did compensate the consumers, albeit late. Mill Bay should have to pay the investigation costs of the Registrar.
- (h) Jason Coburn's salesperson licence expired on March 22, 2018. The Authority brings to my attention Mr. Coburn's past non-compliance issues such as the Undertaking accepted by the Registrar on June 11, 2012; and my interim suspension of August 17, 2017 pending a full hearing. The allegations at the August 17 hearing were that Jason Coburn was operating a dealership (Twin

Speed Motors and Service) without it being registered and he not having an active salesperson licence.

### III. The Law

#### A. Condition on Registration – No Consignment Permitted

[10] Under section 4(4) of the MDA, the Registrar restricts new motor dealers from conducting consignment sales. A dealer selling a consumer's motor vehicle on consignment introduces greater risks to consumers. Motor dealers who conduct consignments have additional oversight concerns (such as their trust accounts) and must provide additional security such as letters of credit. They must comply with specialized legislation covering motor vehicle consignment sales. There can be significant consumer losses if a motor dealer conducting consignment sales goes out of business, or is dishonest. As such, if a motor dealer wishes to conduct consignment sales, they seek approval from the Registrar and are reviewed for risks to the public if granted that special privilege.

- *Southwest R.V. v. Registrar of the Motor Dealer Council of British Columbia* 2007 BCSC 1140 (BC Supreme Court)
- *Southwest RV and Sport Ltd. et al.* (November 20, 2009, File 08-70597, Registrar)
- *Re: LCB Autos Ltd.* (April 1, 2010, File 10-009, Registrar)

#### B. Written Consignment Agreement – section 2 of the Consignment Regulation

[11] When a motor dealer agrees to sell a motor vehicle on consignment, they must complete a written consignment agreement and provide a copy of it to the consignor (the Consumers in this case). This requirement is mandatory, as noted in section 2 of the Consignment Regulation:

2(1) If a consignment is negotiated between a motor dealer and a consignor, the motor dealer **must** prepare a consignment agreement and provide the consignor with a copy of the consignment agreement at the time of signing by the consignor.

[Emphasis added.]

"**[M]ust**" is to be construed as imperative: section 29 of the *Interpretation Act*, R.S.B.C. 1996, c. 238

[12] Section 2(2) of the Consignment Regulation identifies the minimum content of a consignment agreement. These terms include:

- (a) The amount payable to the motor dealer for their services;
- (b) The duration of the consignment;
- (c) That any proceeds are payable to the motor dealer in trust for the consignor;

- (d) The dealer must give notice of the sale within one day of the sale occurring;  
and
- (e) The proceeds of the sale will be given to the consignor within 14 days of the sale.

[13] Section 5 of the Consignment Regulation makes clear that the consignment agreement is to be in writing, in plain language, and easily understood.

[14] These provisions are in place to protect consumers and are mandatory on a motor dealer selling on consignment.

### **C. Written Consignment Purchase Agreement – section 4 of the Consignment Regulation**

[15] Section 4 of the Consignment Regulation requires that any consigned motor vehicles sold by a motor dealer be accompanied with a consignment purchase agreement. That provision requires that a consignment purchase agreement substantially comply with the purchase agreement requirements in the *Motor Dealer Act Regulation* B.C. Reg. 447/78 (“MDAR”) as well as identify the sale as involving a consigned vehicle, and a statement that any payment is to be made to the motor dealer in trust, and payable to the motor dealer’s trust account.

[16] On January 1, 2018, the language in section 4(2) of the Consignment Regulation was amended. It was amended to make clear that a consignment purchase agreement had to comply with the requirements of the MDAR. The requirement that any payment was to be made payable to the motor dealer’s trust account remained unchanged.

[17] Again, the requirement to use a consignment purchase agreement is mandatory with the use of the word “must” within section 4 of the Consignment Regulation. Also, the consignment purchase agreement must be in writing, in plain language, and easily understood: section 5 of the Consignment Regulation.

[18] These provisions are in place to protect consumers and are mandatory on a motor dealer selling on consignment.

### **D. Proceeds of Consignment Sale – section 6 of the Consignment Regulation**

[19] Section 6 of the Consignment Regulation is in place to protect the consignor. It makes clear that any money paid to a motor dealer in relation to a consigned vehicle belongs to the consignor and/or a lien holder. The motor dealer is obligated to deposit the money into a trust account within one day of the money being received. The money cannot be used for any other purpose, and may only be withdrawn for:

6(4)

- (a) disbursing sale proceeds to a consignor or lien holder under a consignment agreement,
- (b) correcting an error caused by money deposited in the trust account by mistake, or,
- (c) making payments to the motor dealer as authorized in the consignment agreement after the payment of the disbursements described in paragraph (a).

[20] This provision also uses the word “must,” making its obligations on a motor dealer mandatory.

### **E. Deceptive Acts or Practices – the BPCPA**

[21] I have discussed in detail the law regarding deceptive acts or practices under the BPCPA in previous decisions. I summarize the pertinent legal principles, regarding deceptive acts or practices, under the BPCPA applicable to this case:

- (a) The BPCPA prohibits a supplier (a motor dealer and a salesperson) from committing a deceptive act or practice in respect of a consumer transaction. The motor dealer must refrain from such conduct even if the consumer is a willing or instigating party to the deceptive conduct.
  - (b) When acting for a consumer, such as in a consignment sale, the BPCPA requires the motor dealer and the salesperson to act in the consumer’s best interest.
  - (c) A deceptive act or practice is conduct, advertising, or any type of representation that has the capability or tendency to mislead someone.
  - (d) A deceptive act or practice may occur innocently, negligently, recklessly, or deliberately; and a consumer may still be entitled to a remedy.
  - (e) A deceptive act or practice can occur before, during, or after a consumer transaction.
  - (f) The BPCPA deems certain conduct to be a deceptive act or practice. For instance:
    - (i) Misrepresenting the consumer’s or the dealer’s rights and obligations in a consumer transaction; and
    - (ii) Representing that the dealer and/or salesperson has an affiliation, status or approval that they do not have.
  - (g) A deceptive act or practice may occur by failing to state a material fact.
  - (h) The mandatory disclosure requirements within the MDA and its regulations, and under the BPCPA, are material facts.
  - (i) If it is alleged that a motor dealer or salesperson has committed a deceptive act or practice, the onus (burden of proof) is on the dealer and the salesperson to show there was no deceptive act or practice.
- *Re: Best Import Auto Ltd. et al.* (November 28, 2017, Hearing File 17-08-002, Registrar) varied but not on this point *Best Import Auto Ltd. v Motor Dealer Council of British Columbia*, 2018 BCSC 834 (CanLII) (BC Supreme Court).

- *Breezy Webster v. Pioneer Garage Ltd. dba Fraser Valley Pre-owned et al.* (April 27, 2018, File 17-07-002, Registrar)
- *Harris & Harris v. Windmill Auto Sales & Detailing Ltd. et al* (April 10, 2013, Hearing File 12-030, Registrar), affirmed by *Windmill Auto Sales & Detailing Ltd. v. Registrar of Motor Dealers*, 2014 BCSC 903 (CanLII) (BC Supreme Court).
- *Knapp v. Crown Autobody & Auto Sales Ltd. et al* (September 21, 2009, File 08-70578, Registrar), affirmed by *Crown Auto Body and Auto Sales Ltd. v. Motor Vehicle Sales Authority of British Columbia*, 2014 BCSC 894 (CanLII).

[22] If there is a breach of the deceptive act or practice provisions of the BPCPA, the Registrar is empowered to, among other things, issue a compliance order on terms the Registrar deems necessary to address that breach and to gain the future compliance of the breaching person. The Registrar may also order the breaching person to pay the actual investigation and legal costs of the Registrar.

- Section 155 of the BPCPA
- *Windmill Auto Sales & Detailing Ltd. v. Registrar of Motor Dealers*

[23] Further, the Registrar is empowered to issue an administrative penalty of up to \$50,000 on a company or \$5,000 on an individual to deter any future non-compliance with the BPCPA, by that specific person or by the industry generally.

- Sections 164 and 165 of the BPCPA
- *R. v. Samji*, 2017 BCCA 415 (CanLII), leave to appeal to the Supreme Court of Canada refused *Rashida Abdulrasul Samji v. Her Majesty the Queen*, 2018 CanLII 48394 (SCC)
- *Guindon v. Canada*, [2015] 3 SCR 3, 2015 SCC 41 (CanLII) (Supreme Court of Canada)
- *Re: Best Import Auto Ltd. et al.*
- *Breezy Webster v. Pioneer Garage Ltd. dba Fraser Valley Pre-owned et al.*

[24] Section 8.1(4)(b) of the MDA deems it grounds to cancel a motor dealer's registration if it breaches the deceptive act or practice provisions of the BPCPA. The discretion to cancel is left to the Registrar. Even so, the legislative direction is for the Registrar to take such breaches seriously.

## **F. Burden of Proof**

[25] The burden of proof is on a balance of probabilities, which is often reframed as "it is more likely than not" that the alleged conduct occurred: *F.H. v. McDougall* [2008] 3 S.C.R. 41, 2008 SCC 53 (CanLII) (Supreme Court of Canada) at para. 44. The balancing is based on the existence of sufficiently clear, cogent, and convincing evidence establishing the fact: *F.H. v. McDougall* at para. 46.

## IV. Discussion

### A. Who is the motor dealer? - Is there a "Jason's Mill Bay" and was it "shut down" in June 2017?

[26] On April 15, 2016, Carmel Custom Contracting Ltd. dba Mill Bay Motors, was issued motor dealer registration # 40282 on condition that the dealer provide the required letter of credit by June 1, 2016, a copy of the business licence, and passing an inspection by the Authority. On April 15, 2017, the motor dealer registration was renewed noting the same corporate owner and the condition that a letter of credit was required by May 1, 2017 and completion of an inspection. That renewal expired on April 18, 2018. On both the April 15, 2016 and April 15, 2017 motor dealer registrations is noted a restriction of "No Consignment Permitted".

[27] Carmel Custom Contracting Ltd. also operates Marlin Motors in Koksilah, British Columbia, dealer # 30638. Marlin Gait is also the owner and dealer principal of that location.

[28] Between April 2016 and April 2017, the Authority was requesting Mill Bay satisfy the letter of credit requirements. On March 9, 2017, a hearing was called before me to address the outstanding letter of credit and review evidence that unlawful activity may be occurring at the Mill Bay premises. At that hearing, Mr. Gait advised that he was ceasing operations at the location until the licensing requirements had been met. I adjourned the hearing to allow the Authority and Mill Bay time to resolve the outstanding licensing issue. In Mill Bay's submissions at the April 5, 2018, hearing, they state that the Mill Bay location was closed in June of 2017.

[29] On July 7, 2017, the Authority advised Marlin Gait, not Jason Coburn, that if no letter of credit was received by July 21, 2017, Mill Bay's registration would be placed in "pending." "Pending" means that the Authority will not take any further administrative steps regarding the registration of the dealership (such as processing changes of address, adding new salespersons as employees, or processing a change in ownership), until the outstanding issue is resolved. It is the Authority's way of saying that the dealership registration is currently not in good standing. If the dealership does not take steps to resolve the outstanding issue, the matter is referred to the Registrar for a hearing to consider a suspension or revocation of the motor dealer's registration.

[30] I do note that there is a series of text messages around July 19, 2017, in which Michael (Dave) Glassco asks Jason Coburn if he was with Mill Bay. Mr. Coburn advises he was leasing the premises and indicated he may not be with Mill Bay. However, that conversation occurred after the Gulfstream was sold.

[31] At the hearing, Compliance Officer Chris Coleman gave evidence of how he and Compliance Support Officer Adam Reynolds went to the Mill Bay location on August 2, 2017, to conduct a secret shop. Jason Coburn tried to sell Compliance Support Officer Adam Reynolds a motor vehicle. The conversation was recorded and

a transcript made, which was attached to the Affidavit of Chris Coleman. Mr. Coleman's Affidavit was entered as Exhibit 2 at the hearing (the "Affidavit"). During that part of the conversation, Jason Coburn says that "they" have two dealership locations and are going down to one location. This contrasts with the response Mr. Coburn gave on or around July 19, 2017 to Michael (Dave) Glassco.

[32] After Compliance Officer Chris Coleman identified himself as with the Authority, he and Jason Coburn discuss the consumer transaction and the ownership of the Mill Bay location. On August 2, 2017, Jason Coburn says he intended on buying Mill Bay, but he had not done so by that time. Mr. Coburn speaks about how he has the paperwork in his briefcase to register Mill Bay as his dealership: Exhibit F attached to the Affidavit, Transcript of Interview, pages 47 to 48 (74 to 75 of the Exhibits). See also Exhibit F Transcript, pages 57 to 60; pages 84 to 87 of the Exhibits of the Affidavit.

[33] After the Consumers filed their complaint, the Authority sent a Notice of Consumer Complaint on July 27, 2017 to the email address of Marlin Gait. That Notice identified the allegations being made by the Consumers. The Notice requested that Marlin Gait, as authorized spokesperson for Mill Bay, provide the dealer's records of the consumer transaction and a dealer response.

[34] At all times pertinent to the Complaint of the Consumers and the consumer transaction, the registered motor dealer at 2992 Church Way, Mill Bay, B.C. was Carmel Custom Contracting Ltd. *dba* Mill Bay Motors. The identified owner and dealer principal is Marlin Gait. There is no record that Jason Coburn was an owner or shareholder of Mill Bay.

[35] I find on a balance of probabilities that Carmel Custom Contracting Ltd. *dba* Mill Bay Motors was the responsible motor dealer in this consumer transaction and that it was not closed in June of 2017.

## **B. Breach of Condition of Registration – No Consignment Permitted**

[36] The evidence of the Consumers was that they were referred to Jason Coburn at Mill Bay by Arbutus R.V. A text message in the Affidavit of Chris Coleman supports their evidence.

[37] The Consumers also state that they agreed to let Jason Coburn at Mill Bay sell their Gulfstream and that they wanted to receive \$8,000 from its sale. The Consumer's evidence is supported by copies of text messages and, to some degree, by admissions made by Jason Coburn, during Compliance Officer Chris Coleman's discussions with him on August 2, 2017. I would note that on that same date, Mr. Coburn contacted Henry (Dave) Glassco to transfer \$1,000 to him, as evidenced in text messages also attached to the Affidavit. A review of all the text messages shows Jason Coburn agreeing that the Consumers were owed \$8,000 upon the sale of the Gulfstream.

[38] I am satisfied on the evidence that Mill Bay agreed to a consignment sale of the Gulfstream: see the definition of "consignment" in section 1 of the Consignment Regulation. As noted, the motor dealer registration of Mill Bay specifically notes a restriction of "No Consignment Permitted." I find that Mill Bay was in breach of the restriction on its motor dealer registration: s. 4(4) of the MDA.

### C. Breach of section 2 of the Consignment Regulation

[39] There was no written consignment agreement as required by section 2 of the Consignment Regulation. In the interview of Jason Coburn, he suggests that he was just helping the consumers and did the sale on the "side of the road." Mr. Coburn is intimating this was not a true consignment sale by a motor dealer. The text messages show otherwise. In one text message is a Craig's List advertisement copy for Jason Coburn's approval, noting the Gulfstream for sale, its asking price and to contact Jason Coburn at Mill Bay and lists a phone number. This is conducting a consignment sale.

[40] Section 2(2) of the Consignment Regulation requires that certain information be provided to the consigning consumers in the form of a consignment agreement. The information is for the protection and benefit of the consumers and advises them of their rights and of the motor dealer's obligations in the transaction, as follows:

(2) The consignment agreement **must** contain all the following information:

- (a) a complete description of the motor vehicle being consigned;
- (b) the minimum price the consignor will accept for the sale of the motor vehicle;
- (c) the amount payable to the motor dealer, for services provided by the motor dealer as a consignment agent, expressed as
  - (i) a fixed amount payable only if the motor vehicle is sold,
  - (ii) a fee for services that is
    - (A) a fixed amount payable whether or not the motor vehicle is sold,
    - (B) a percentage of the actual selling price of the motor vehicle payable only if the vehicle is sold, or
    - (C) an amount that exceeds an agreed upon minimum selling price of the motor vehicle payable only if the vehicle is sold, or

- (iii) any combination of the fee for services under subparagraph (ii) (A), (B) or (C);
- (d) the duration of the consignment agreement;
- (e) a statement that any cheque, bank draft or money order of the purchaser must be made payable to the motor dealer in trust;
- (f) a statement that the consignor must not sign over vehicle ownership registration forms in blank to the motor dealer;
- (g) a declaration of title from the consignor, including any outstanding liens, which must be discharged at the time of sale;
- (h) a description of any warranty or guarantee assignable by the consignor;
- (i) a statement of the responsibilities of both the consignor and the motor dealer with respect to insurance coverage on the motor vehicle during the period of the consignment agreement;
- (j) a statement of the responsibilities of both the consignor and the motor dealer when the motor vehicle is sold by the motor dealer, including a statement that
  - (i) the motor dealer must send or deliver to the consignor notification of the sale of the consigned vehicle within one day after the sale of the consigned vehicle, and
  - (ii) disbursement of the sale proceeds must take place within 14 days after the sale of the consigned vehicle unless the consignor specifically waives this right, in writing, after the sale.

[41] The wording of section 2 of the Consignment Regulation imposes the statutory duty on the motor dealer, Mill Bay, to provide a consignment agreement. Mill Bay did not and is in breach of section 2 of the Consignment Regulation.

[42] Further, section 2(2)(j)(ii) required Mill Bay to pay the Consumers the proceeds of sale within 14 days of that sale. The evidence is clear that this did not happen; and Mill Bay is also in breach of this specific provision.

#### **D. Breach of section 4 of the Consignment Regulation**

[43] Mill Bay does not appear to have produced a copy of a purchase agreement that it prepared in this consignment sale as required by section 4 of the Consignment Regulation. That is a breach of section 4 of the Consignment

Regulation. However, this would be a breach in relation to the purchasing consumers who were not complainants before me. So, I decline to make a finding on this allegation without having heard from the purchasing consumers.

#### **E. Breach of section 6 of the Consignment Regulation**

[44] Section 6 of the Consignment Regulation requires the money from the proceeds of sale to be held in trust for the consignor and any lien holder. Sub-section 6(3) directs that money paid to a dealer must be deposited into the dealer's trust account within one day of its receipt of same. That provision also states when that money can be withdrawn and for what purposes. These are mandatory requirements. I set out section 6 of the Consignment Regulation in full:

##### **Manner of payment**

- 6 (1) Any payment received from a purchaser is deemed to be held in trust for the consignor and lien holder.
  
- (2) Money held by a motor dealer in trust under subsection (1)
  - (a) continues to be the beneficial property of the consignor and lien holder,
  - (b) must not be used as collateral by the motor dealer, and
  - (c) is not subject to attachment or execution against the motor dealer.
  
- (3) Within one day after payment is received from the purchaser, the payment **must** be deposited by the motor dealer in a trust account at a savings institution located in British Columbia, and the trust account must be designated as a trust account in the records of the savings institution and the motor dealer.
  
- (4) A motor dealer **must not** withdraw or authorize the withdrawal of any trust funds referred to in this section unless the funds are for the purpose of
  - (a) disbursing sale proceeds to a consignor or lien holder under a consignment agreement,
  - (b) correcting an error caused by money deposited in the trust account by mistake, or,
  - (c) making payments to the motor dealer as authorized in the consignment agreement after the payment of the disbursements described in paragraph (a).

[45] During the interview conducted by Compliance Office Chris Coleman, Mr. Coburn speaks about how the proceeds were deposited into "his account;" and he did not realize his account was in the negative because of recent expenditures. Mr. Coburn stated his family was getting him a cheque and he will be "paying Dave

out.” Dave refers to Henry (Dave) Glassco. See page 52 of the Transcript, being page 79 of the Affidavit Exhibits. See also pages 63 to 64 of the Transcript, being pages 90 to 91 of the Affidavit Exhibits.

[46] From this exchange with Jason Coburn, it can be readily inferred that the proceeds of sale from the Gulfstream were not deposited into the motor dealer’s trust account. It was comingled in the account of Jason Coburn. It also shows the proceeds were used to pay the overdraft of Mr. Coburn’s account. It is to avoid situations like this that proceeds of sale from a consignment sale are not to be comingled with a motor dealer’s general bank account, or the personal account of an employee.

[47] I am satisfied on the evidence before me that the proceeds of sale of the Consumers’ Gulfstream were not deposited into Mill Bay’s trust account. Mill Bay is in breach of sub-section 6(3) of the Consignment Regulation. I am also satisfied that the proceeds of sale were used for a purpose other than allowed by sub-section 6(4) of the Consignment Regulation, and Mill Bay is also in breach of that sub-section.

## **F. Breach of the BPCPA – deceptive act or practice**

### ***1. Conducting Consignment Sales***

[48] From the forgoing, by words and by conduct, Jason Coburn and Mill Bay represented to the Consumers that they were lawfully authorized to conduct consignment sales. This was not true. This is a representation that Mill Bay had an approval that they did not actually have and is deemed to be a deceptive act or practice: s. 4(3)(b)(i) of the BPCPA. By not advising the Consumers that Mill Bay was restricted from conducting consignment sales, Mill Bay also failed to state a material fact to the Consumers, which is also deemed to be a deceptive act or practice: s. 4(3)(b)(vi) of the BPCPA. Mill Bay and Jason Coburn have not disproven this: section 5(2) of the BPCPA.

### ***2. Failure to disclose the consumer’s rights and the motor dealer’s obligations***

[49] Section 2 of the Consignment Regulation requires the motor dealer make certain disclosures to a consignor, in the form of a consignment agreement, outlining the consignor’s statutory rights and the motor dealer’s statutory obligations. As the law requires their disclosure, they are material facts. As such, and because Mill Bay and Jason Coburn did not make those material fact disclosures to the Consumers and in the manner required by the legislation, Mill Bay and Jason Coburn are deemed to have committed a deceptive act or practice: s. 4(3)(b)(vi) of the BPCPA. Mill Bay and Jason Coburn have not disproven this: section 5(2) of the BPCPA.

### ***3. Misrepresenting payment of funds***

[50] It is clear from the text messages that Jason Coburn represented to the Consumers that Mill Bay would sell the Gulfstream for them and remit them the proceeds of sale. This did not occur. After the Gulfstream was sold, Jason Coburn represented to Henry (Dave) Glassco that there were difficulties in paying the proceeds as there were three people who jointly purchased the Gulfstream for their company, and Mr. Coburn was waiting for their individual cheques to clear: page 12 of the Affidavit Exhibits, July 6 and July 11 text messages. The ICBC Transfer/Tax Form obtained by the Authority shows the Gulfstream was purchased by two individuals and noting only one address. There is no indication it was purchased by a business. This is a misrepresentation by Mr. Coburn acting on behalf of Mill Bay.

[51] On July 19, 2017, Mr. Coburn advises Henry (Dave) Glassco that Mr. Coburn's business partner has taken off with the bank accounts, and that Mr. Coburn was working with the bank to establish a line of credit to pay the Consumers: page 13 of the Affidavit Exhibits. As already noted, the money was deposited into Mr. Coburn's account and was used to cover his overdraft. This is a misrepresentation by Mr. Coburn, acting on behalf of Mill Bay.

[52] Based on the forgoing, I find that Jason Coburn and Mill Bay made misrepresentations to the Consumers regarding the payment of the proceeds of sale, which are deceptive acts or practices contrary to section 5(1) of the BPCPA. Mill Bay and Jason Coburn have not disproven this: section 5(2) of the BPCPA.

### **G. Comments on Mill Bay's submissions**

[53] I will address Mill Bay's submissions regarding the Authority being partially to blame, that the Authority's employee Charles List did not provide emails, and that the Consumers were only owed a further \$900.

#### ***1. The Authority is partially to blame***

[54] Mill Bay submits that the Authority is partly to blame for not looking into the letter of credit issue more closely. In reviewing the submissions, Mill Bay is speculating about what might have happened, if the Authority had made inquiries of Scotiabank about the letter of credit. Speculative arguments are not a basis to attach fault. Further, the issue here is not whether the Authority should have inquired about a letter of credit, but whether Mill Bay (1) was selling a consigned vehicle without lawful authority to do so, (2) sold the Gulfstream in a manner contrary to the legislation, and (3) failed to remit the proceeds of sale to the Consumers. It is not a question about a letter of credit, but of Mill Bay operating outside the bounds of its motor dealer registration and of the legislation. I find Mill Bay is simply trying to deflect a review of its own failure to oversee its employee and operate its location in compliance with the legislation.

## ***2. The failure to provide emails***

[55] Mill Bay states that, had it received prior communications (emails) from Charles List, legal administrative assistant and hearing coordinator, it may have settled these matters sooner.

[56] I cannot accept this argument, as Mill Bay's actions show the contrary. As noted, Marlin Gait was emailed a Notice of Consumer Complaint in this case on or about July 27, 2017. Mill Bay was served with the Hearing Notice and a copy of the Affidavit on March 5, 2018. There was nothing preventing Mill Bay from addressing the issue and pursuing settlement upon receipt of those documents. Further, at the hearing, Mr. Gait indicated he wished to settle this matter and I adjourned the hearing to allow those discussions to occur. No settlement was reached.

## ***3. The Consumers were owed only a further \$900***

[57] In written submissions, Mr. Gait on behalf of Mill Bay, states that upon his review of the documents and further reflection, the Consumers were only owed a further \$900. Mr. Gait's, for the first time, also alleges that the Consumers declared a lesser value for the Gulfstream than paid, which would benefit the purchasers by way of a tax savings.

[58] As stated by the Authority, there is nothing in the evidence to suggest a \$900 figure is all that was owing. The only document that shows a \$900 figure is the tax payable by the purchasers of the Gulfstream as noted on the ICBC Transfer/Tax Form: page 23 of the Affidavit Exhibits. The evidence also shows that the Consumers had completed the seller portion of that form leaving the purchaser information section blank and the selling price section blank: picture at page 15 of the Affidavit Exhibits. The text messages show that Jason Coburn met the Consumers near the Tsawwassen ferry terminal to pick up the paper work, before the sale occurred. At the time they provided Jason Colburn the ICBC Transfer/Tax Form, the Consumers did not know who the purchaser was going to be, nor the final selling price of the Gulfstream. At the time of the consumer transaction, the Consumers were living in Delta; while the Gulfstream was sold on Vancouver Island. From the evidence, I am satisfied that the Consumers did not complete the selling price portion of the ICBC Transfer/Tax Form.

[59] I would note that Mr. Gait, on behalf of Mill Bay, is admitting that at the time of the April 5, 2018 hearing, the Consumers were still owed money, albeit he now believes it to be a lesser amount.

## **V. Summary of Findings**

[60] For ease, I summarize my above findings as follows:

- (a) Mill Bay is in breach of the restriction on its registration, restricting it from selling consigned motor vehicles: section 4(4) of the MDA;
- (b) Mill Bay is in breach of sections 2 and 6 of the Consignment Regulation, by

- i. Failing to complete and provide the Consumers with a consignment agreement; and
  - ii. Not depositing the proceeds of sale into Mill Bay's trust account, not paying the proceeds within the legislated time frame, and by allowing the proceeds of sale to be used for a purpose not authorized by the Consignment Regulation.
- (c) Mill Bay and Jason Coburn have committed deceptive acts or practices in respect of this consumer transaction, contrary to section 5(1) of the BPCPA, by
- i. Misrepresenting to the Consumers, through conduct, that Mill Bay was authorized to conduct consignment sales, when it was not;
  - ii. Failing to state a material fact to the Consumers, being that Mill Bay was restricted from selling motor vehicles on consignment;
  - iii. Failing to state a material fact, by not disclosing to the Consumer's their legal rights and Mill Bay's legal obligations in the consumer transaction, as required by the Consignment Regulation; and
  - iv. Misrepresenting the payment of the proceeds of sale and the status of that payment.

## **VI. Compliance**

[61] Given my above findings it is necessary to consider compliance action against Mill Bay and Jason Coburn. The purpose of such compliance action is to deter future non-compliance by Mill Bay and Jason Coburn specifically, as well as on the industry generally. If I believe, on a balance of probabilities, that future compliance by Mill Bay and Jason Coburn cannot be reasonably assured, then my duty is to protect the public by removing them from the industry.

- *Harris & Harris v. Windmill Auto Sales & Detailing Ltd.* (April 10, 2013, File 12-030, Registrar), and affirmed by *Windmill Auto Sales & Detailing Ltd. v. Registrar of Motor Dealers*, 2014 BCSC 903 (BC Supreme Court)

### **A. Mill Bay's motor dealer registration**

[62] Mill Bay's motor dealer registration #40282, lapsed on April 18, 2018. That motor dealer registration was not renewed and therefore is no longer valid by operation of the law: section 4(3) of the MDA. Therefore, there is no registration to add conditions to, suspend, or revoke, as a compliance measure.

### **B. Jason Coburn's Salesperson Licence**

[63] Jason Coburn's salesperson licence #106135, expired on March 22, 2018. It was not renewed and is no longer valid by operation of the law: section 4 of the *Salesperson Licensing Regulation*, B.C. Reg. 202/2017. Therefore, there is no

salesperson licence to add conditions to, suspend, or revoke, as a compliance measure.

### **C. Compliance Order**

[64] The Consumers have received the funds that they were entitled to receive, albeit late. Given Mill Bay's motor dealer registration has lapsed and Jason Coburn's salesperson licence has also lapsed, I do not find it necessary to make a compliance order against each on terms designed to ensure their future compliance to protect the public interest. Such a protective order is not now required.

### **D. Administrative Penalty**

[65] At the time of the conduct under review, there was no administrative penalty regime for breaching the Consignment Regulation. That regime became law on January 1, 2018. I am unable to impose an administrative penalty as a deterrent on Mill Bay and Jason Coburn for their breaching the Consignment Regulation prior to January 1, 2018: *Thow v. B.C. (Securities Commission)* 2009 BCCA 46 (BC Court of Appeal).

[66] At the time of the consumer transaction and the conduct of Mill Bay and Jason Coburn after the transaction, the BPCPA administrative penalty regime was in place. In considering whether to impose an administrative penalty, I am mindful that deterring Mill Bay and Mr. Coburn takes on a lesser role as they are no longer authorized to operate in the industry. Even so, the deterrence needed on the industry generally is an important consideration: *Knapp v. Crown Autobody & Auto Sales Ltd. et al.* (September 21, 2009, File 08-70578, Registrar) affirmed by *Crown Auto Body and Auto Sales Ltd. v. Motor Vehicle Sales Authority of British Columbia*, 2014 BCSC 894 (BC Supreme Court)

[67] I note that the Authority did not argue that an administrative penalty be imposed on Mr. Coburn. Instead, the Authority seeks a five-year ban on his ability to apply for a licence. This is discussed more fully below.

[68] The Authority suggests that I consider that the legal entity Carmel Custom Contracting Ltd. also operates Marlin Motors and that a penalty would also operate as a deterrence to that location. While I can generally accept that the legal entity is the same, and any penalty is being imposed for conduct at the Mill Bay location, I am concerned that Mill Bay and Carmel Custom Contracting Ltd. *dba* Marlin Motors, registration #30638, as well as its owner, Marlin Gait, did not receive sufficient notice that an administrative penalty may be imposed for this purpose. I will not consider this form of specific deterrence against Carmel Custom Contracting Ltd. *dba* Marlin Motors.

- *Best Import Auto Ltd. v Motor Dealer Council of British Columbia*, 2018 BCSC 834 (CanLII) (BC Supreme Court)

[69] In assessing the appropriate amount of an administrative penalty, I am to consider the factors in section 164(2) of the BPCPA, and the whole case.

[70] In its oral argument, the Authority submitted that an administrative penalty of \$7,500 is warranted to deter the clear non-compliance of Mill Bay, citing *Re: Wen Li Xu dba Golden Year Auto Broker et al.* (April 28, 2015, File 14-11-004, Registrar) ("*Golden Year*"). In its written submissions, the Authority says the penalty can be reduced to \$7,000 due to Mill Bay resolving the Consumer's monetary claim. However, the Authority notes that Mill Bay paid the Consumers only after the conclusion of the hearing and Mill Bay's having heard all the evidence. The Authority remains concerned that Mill Bay will continue to be non-compliant. As noted, my focus here is more on general deterrence as Mill Bay is no longer registered.

[71] Mill Bay chose not to make submissions regarding an administrative penalty, even though the Authority made Mill Bay aware of the Authority's position on an administrative penalty.

[72] I now turn to a review of the sub-section 164(2) BPCPA factors and the whole case as it relates to Mill Bay.

**1. 164(2)(a) previous enforcement actions for contraventions of a similar nature**

[73] There is no evidence of previous enforcement action against Mill Bay for a contravention of a similar nature.

**2. 164(2)(b) the gravity and the magnitude of the contravention**

[74] Mill Bay's contravention was a breach of the Consumers' trust. The Consumers entrusted Mill Bay with selling the Gulfstream, the Consumers' property, and remitting the proceeds of sale to them. In this regard, Mill Bay was to act in the Consumers' best interest and did not. Mill Bay's conduct severely impacts on the reputation of the industry in the eyes of consumers – it diminishes consumer trust in the industry. I recognize that the Consumers' safety was not an issue in this case, but it did impact their financial position. The gravity, the seriousness of these transgressions, is high.

[75] On the evidence, the consumer transaction involved \$8,000, of which the Consumer's claimed \$4,000 was still owing. The magnitude of the contravention, as a value of the claim amount, is on the low end.

**3. 164(2)(c) the extent of the harm to others resulting from the contravention;**

[76] On the evidence before me, the harm was confined to the Consumers and the one consumer transaction.

**4. 164(2)(d) whether the contravention was repeated or continuous;**

[77] On the evidence, Jason Coburn misled the Consumers regarding the status of the payment of the proceeds at least two times after the consumer transaction. First, Jason Coburn noted he was waiting for the cheques to clear from three individuals. This was not true. Second, Jason Coburn advised that his business partner had cleared the accounts – implying that he had taken all the money. Also, not true. Jason Coburn furthered this misrepresentation by saying he had an appointment with the bank and was getting a line of credit to pay the Consumers. Jason Coburn's various statements, while acting for Mill Bay, made the deceptive act, continuous.

**5. 164(2)(e) whether the contravention was deliberate;**

[78] It can be readily inferred from the evidence that the deceptive acts or practices were deliberate. Jason Coburn knew that his statements to the Consumers about the status of payment of the proceeds and why it was delayed were not true. Mill Bay knew that it was not authorized to conduct consignment sales and by its conduct represented to the Consumer's it was so authorized.

**6. 164(2)(f) any economic benefit derived by the person from the contravention;**

[79] The documentary evidence suggests the Gulfstream was sold for \$7,500: ICBC Transfer/Tax Form, page 23 of the Affidavit Exhibits. Jason Coburn's interview of August 2, 2017, suggests otherwise. From the interview of Jason Coburn, it appears the Gulfstream was advertised at \$9,999.00 and an offer was made to purchase at that price. Jason Coburn estimates his reconditioning costs were \$700 or \$800: pages 49 to 52 of the Transcript, being pages 76 to 79 of the Affidavit Exhibits. If this is correct, and I recognize the evidence is imprecise, then the overall profit would have been around \$1,200.

[80] Of course, the economic benefit would have been at least the \$4,000 the Consumers were owed, had Mill Bay not paid them the day after the hearing.

**7. 164(2)(g) the person's efforts to correct the contravention.**

[81] There was little effort to correct the contravention. The Consumers were paid only after the hearing, despite an opportunity for Mill Bay to settle the matter up to and including the hearing date. In its written submissions, Mill Bay tried to shift blame, including onto the Consumers (tax avoidance allegation), arguing that it was only obligated to the Consumers for a further \$900.

**8. Considering the whole case and precedents**

[82] At the core of this case is a breach of consumer trust by Mill Bay and Jason Coburn, exacerbated and furthered by acting in a deceptive manner, contrary to Mill Bay's registration restrictions, and in disregard of the legislation. This is a

serious matter, impacting the Consumers specifically and consumer confidence in the industry generally. Mill Bay's conduct at the hearing, and in its closing written submissions, in which it blames others, highlights that Mill Bay either lacks insight of, or has a disregard for, its legal obligations and duties as a motor dealer.

[83] The importance of a motor dealer and a salesperson understanding and meeting its legal obligations under the BPCPA, is in support of consumer protection, public safety, and fair play in the market place. The importance of a regulated person, including motor dealers, understanding their legal obligations has been supported and emphasized by the courts.

- *R. v. Fitzpatrick*, [1995] 4 SCR 154, 1995 CanLII 44 (SCC) at paragraph 40 (CanLII) (Supreme Court of Canada)
- *Windmill Auto Sales & Detailing Ltd. v. Registrar of Motor Dealers*, 2014 BCSC 903 (B.C. Supreme Court) at paragraph 59
- *Ontario (Registrar, Motor Vehicle Dealers Act) v. Unity-A-Automotive Inc.*, 2009 CarswellOnt 7553, 98 O.R. (3d) 468, 257 O.A.C. 332 (Ontario Superior Court of Justice (Div. Ct.))

[84] The Authority suggests a \$7,000 administrative penalty, citing *Golden Year*. In *Golden Year*, the dealer had previously advertised and sold vehicles that were not suitable for transportation. It entered into an undertaking in 2013 to abide by the legislation including the BPCPA, reimburse the consumers the purchase price of the vehicle, and pay an administrative penalty of \$1,000 and costs. A voluntary undertaking is a positive commitment by a dealer to take steps to be compliant and usually results in a lower administrative penalty, because it shows a willingness by the regulated person to proactively rectify their non-compliance. At the 2015 hearing, *Golden Year* was found to have advertised motor vehicles that were unsuitable for transportation, was again in breach of the BPCPA, and its registration had already lapsed. *Golden Year* was banned for 5 years from applying to be a motor dealer, costs were assessed, and a \$5,000 administrative penalty was imposed.

[85] The case of *Knapp v. Crown Autobody & Auto Sales Ltd. et al.* involved a motor dealer, who rebuilt a motor vehicle to a substandard condition, and in a manner that hide that condition from inspection, unless the vehicle was partially torn down. The motor vehicle was not suitable for transportation. The motor dealer misrepresented the motor vehicle to the consumers. In that case the deception was considered so serious, as to endanger the consumers and the general-public on an on-going basis, that the dealer registration was cancelled. As a general deterrent, a \$20,000 administrative penalty was issued and costs assessed. There was no prior compliance history.

[86] In an Undertaking involving Olympic Motors (March 24, 2017, File 16-04-001, Registrar) the dealer was found to have made misrepresentations regarding consumer financing and to have committed deceptive acts or practices. As part of the Undertaking the dealer was ordered to pay costs and a \$5,000 administrative penalty. There was no prior compliance history.

[87] In the case of Mill Bay, there is a significant breach of the consumer's trust that impacts the industry's reputation. The breach also involves the use of consumer's property to pay a debt, and failure to repay the consumers – at least until after the hearing. The harm that could have been suffered was financial. There was no evidence of potential personal injury as in the case of *Crown*. Mill Bay's breach is a first-time breach. The motor dealer continues to blame others for the harm caused in this case and lacks insight into its legal duties. I find this case similar to *Golden Year* and to the Olympic undertaking. In both cases a \$5,000 administrative penalty was ordered. In considering these cases, and the factors under section 164(2) of the BPCPA, it is my opinion that a \$5,000 administrative penalty will serve as a sufficient deterrent on the industry generally and is ordered against Mill Bay.

### **E. Future Applications from Mill Bay and Jason Coburn**

[88] Mill Bay's registration has lapsed as has Jason Coburn's salesperson licence. They could re-apply for registration or licensing at any time. To protect the Registrar's process, I may order a term in which I would not accept an application from Mill Bay for registration as a motor dealer or Jason Coburn for licensing.

- Section 27(2) of the *Interpretation Act*, R.S.B.C. 1996, c. 238
- *Pugliese v. Clark*, 2008 BCCA 130 (CanLII) (BC Court of Appeal).
- *Re: Best Import Auto Ltd. et al.* (November 28, 2017, File 17-08-002, Registrar) varied but not on this point by, *Best Import Auto Ltd. v Motor Dealer Council of British Columbia*, 2018 BCSC 834 (BC Supreme Court)

[89] I note that both Mill Bay and Jason Coburn were given notice of this hearing and notice that their respective motor dealer registration and salesperson license were under review and may be revoked. They have had an opportunity to be heard.

- *Best Import Auto Ltd.*

[90] I now turn to consider a time ban for each.

#### **1. Mill Bay**

[91] The Authority did not seek a ban against Carmel Custom Contracting Ltd. dba Mill Bay Motors from re-applying for registration as a motor dealer. The Authority does raise a concern that Marlin Gait, the owner of the two dealer locations operated by Carmel Custom Contracting Ltd., appears incapable of providing appropriate oversight of two dealer locations. Given the Authority did not request a ban on Mill Bay, I believe it would be fairer to wait and see if Carmel Custom Contracting Ltd. applies to operate a second location, and address any of the Authority's concerns, if or when Carmel Custom Contracting Ltd. should make such an application.

## 2. Jason Coburn

[92] It was Jason Coburn who orchestrated this consumer transaction, made misrepresentations to the consumers, gave the Consumer's assurances of being paid by misrepresenting the facts, deposited the Consumer's money into his own account, which was then used for an improper purpose, and did not pay the Consumers. As noted, it was Jason Coburn's direct conduct that breached the Consumer's trust and impacts on the reputation of the industry. Jason Coburn chose not to participate in the hearing process, which is indicative of an unwillingness to be regulated – an indication that goes to his governability.

[93] Jason Coburn was already on an Undertaking, which was accepted by the Registrar on June 11, 2012. In that Undertaking Jason Coburn admitted to having attempted to sell a motor vehicle, while not licensed to do so, and having offered a vehicle for sale that was not in his possession and tried to sell it at a location other than from the dealership, which owned the vehicle. This too shows Jason Coburn's unwillingness to abide by the law governing this industry and his governability. Madame Justice Sharma confirmed a salesperson's trust position vis-à-vis consumers, and their need to abide by the law:

[23] The Registrar states that the requirement to examine a person's past conduct demonstrates an overarching concern with public safety. Past conduct is the statutory tool by which the Registrar can determine if applicants will be governable, act in accordance with the law and conduct themselves with honesty and integrity. Salespersons are in a position of trust with the buying public who rely on them to give clear and honest information about buying motor vehicles. The public also expects safety to be a priority if taking a test drive with a salesperson. Lastly, integrity is important because salespersons may be privy to customer's confidential personal information including home address and financial information.

- *Fryer v. Motor Vehicle Sales Authority of British Columbia*, 2015 BCSC 279 (BC Supreme Court) affirming *Re: Peter Fryer*, (December 13, 2013, Hearing File No. 13-11-005, Registrar).

[94] The Authority notes that, on August 17, 2017, Jason Coburn was called to a hearing to review allegations that he was operating a motor dealership without having a motor dealer registration, sold vehicles on consignment without authorization, and acted as a salesperson without an active salesperson licence. That hearing was adjourned to allow Mr. Coburn's recently retained lawyer time to review the materials. The hearing has yet to be reconvened. I recognize that these remain unproven allegations and give them no weight in my decision here.

[95] Given the above conduct of Jason Coburn, I have concerns with his governability and whether he will abide by the law in the future. The conduct of Jason Coburn noted in these reasons calls for a measure to protect the public and

the Registrar's process, as well as to provide certainty and clarity, regarding Jason Coburn's suitability to be licensed as a salesperson. I believe there should be a period of time in which I will not accept an application to licence Jason Coburn. Given the concerning conduct here, Jason Coburn needs sufficient time to show, with evidence, that he has changed his ways (rehabilitated), exhibited a verifiable history of good conduct, and demonstrated that he may again be trusted by the public to operate in this industry.

[96] In considering the appropriate length of time, I find the case of *A Vancouver Auto Ltd. and Shahram Moghaddam* (April 3, 2017, File 16-04-001 and 16-05-003, Registrar) to be instructive. In that case, the dealer and its owner were seeking to be registered and licensed. The dealer and the salesperson had a history of non-compliance. While operating a motor dealer in B.C. nine years prior, they were found to have committed deceptive acts or practices in a consumer transaction. Instead of addressing the consumer restitution directly at that time, the dealer closed; and the consumer was compensated by the Motor Dealer Customer Compensation Fund.

[97] At the hearing to review their new applications, the owner of *A Vancouver Auto Ltd.*, blamed others for the original transgressions, even saying the prior Registrar's decision was unfair. The owner showed a lack of appreciation for a motor dealer's obligations. For example, his proposed business structure included someone assisting him with the new dealership, because he did not understand all aspects of running the dealership. The request to register the motor dealer and licence the owner as a salesperson was rejected. It was noted that nine years having passed, does not mean that the dealer and salesperson would now be compliant. The owner was prohibited from applying for registration as a motor dealer until he had worked as a salesperson at a dealership that provided him with oversight. As for applying to be a salesperson,

[33] I would consider receiving an application for a salesperson licence from Mr. Moghaddam once he has rebuilt a history of good behaviour that can be verified by evidence. Given the findings in 2008, I would want to see two years of history with verifiable evidence of good behaviour starting from the date of this decision, before I would consider such an application: *Pugliese v. Clarke*, 2008 BCCA 130 (BC Court).

[98] Another instructive case is *Golden Year* as cited by the Authority. In that case the dealer had breached a prior Undertaking not to display for sale or sell motor vehicles that were not suitable for transportation, unless advertised as such. *Golden Year* breached that Undertaking and was found to be placing consumers at risk of physical harm and to be ungovernable. The Registrar ordered a five-year ban on the motor dealer and on the responsible salesperson from re-applying for a motor dealer registration and a salesperson licence.

[99] I find that in the case of Jason Coburn, a five-year ban on accepting an application for a licence in this industry is appropriate, and is ordered. I find that

Jason Coburn's conduct was significantly more serious than *A Vancouver Auto Ltd. and Shahram Moghaddam*, in that there was a breach of trust and misuse of consumer money not present in the *A Vancouver Auto Ltd.* case. I find Jason Coburn's conduct is closer to that of Golden Year's in impacting consumer confidence in his being licensed, and him having breached a prior undertaking. I recognize that in *Golden Year*, consumers were in jeopardy of suffering physical harm, which does not appear in this case. Even so, there was a significant breach of consumer trust by Jason Coburn, such that the public would want to see a significant history of good conduct, evidence of rehabilitation, and Jason Coburn showing insight into the legal duties of a licensee, before he can again be considered for licensing in this industry.

#### **F. Costs**

[100] Under section 155(4)(d) of the BPCPA, I can order Mill Bay and Jason Coburn reimburse the Registrar's investigation/inspection and hearing costs associated with this case. I currently see no principled reason why that should not occur here. The Authority may provide written submissions regarding costs and their amount with a copy to Mill Bay and Mr. Coburn within 30 days of this decision's date. Once Mill Bay and Mr. Coburn receive, or are deemed to have received, the Authority's written submissions, they will have 21 days to provide their own written submission on costs.

#### **VII. Review of Decision**

[101] The administrative penalty made under the authority of the *Business Practices and Consumer Protection Act* may be reconsidered pursuant to sections 180 to 182 of that Act. Such a request for reconsideration must be made in writing within 30 days of receiving the Notice of Administrative Penalty. The request for reconsideration must identify the errors or grounds for reconsideration and must enclose the new evidence that, as required by those provisions of the BPCPA, supports the reconsideration.

[102] The written request for reconsideration can be sent to the Registrar, care of, Charles List at:

[Charles@mjscabc.com](mailto:Charles@mjscabc.com)

[103] The entire decision of the Registrar may be reviewed by petitioning the B.C. Supreme Court for judicial review pursuant to the *Judicial Review Procedure Act*. Such a petition is to be filed with the B.C. Supreme Court within 60 days of this decision being issued: subsection 7.1(t) of the *Motor Dealer Act*.

Date July 6, 2018

Original Signed

\_\_\_\_\_  
Ian Christman, J.D., Registrar