



**Neutral Citation: 2019-BCRMD-020**

**IN THE MATTER OF THE *MOTOR DEALER ACT*, R.S.B.C. 1996, C. 316 and  
THE SALESPERSON LICENSING REGULATION, B.C. Reg. 202/2017**

**HASSAN MAHFOUZ**

(Proposed salesperson licence # 210569)

Salesperson Applicant

**Registrar's Decision**

**Date and place of decision:** August 20, 2019 at Langley, British Columbia

**By way of written submissions**

**I. Introduction**

[1] Hassan Mahfouz applied to be licensed as a salesperson. In conducting its normal background checks and review of Mr. Mahfouz's application, the Authority identified a criminal record of concern as well as regulatory action taken by the Alberta Motor Vehicle Industry Council regarding Mr. Mahfouz's salesperson licence in Alberta.

[2] The Authority proposed to recommend to the Registrar, that Mr. Mahfouz be denied a salesperson licence in British Columbia. Mr. Mahfouz was advised of this and provided a Notice of Hearing and the supporting Licensing Hearing Report with its attached documents. This was done by email on July 10, 2019. In that email was a hyperlink to an audio recording of the interview Mr. Mahfouz gave with the Authority.

[3] The Hearing Notice indicated the hearing was by way of written submissions and advised Mr. Mahfouz how to apply for an oral hearing if he wanted an oral hearing. The Notice of Hearing and the email from the Authority of July 10, 2019, stated Mr. Mahfouz's written response was due by August 9, 2019. I am advised that no written response was received from Mr. Mahfouz.

## II. Service of the Hearing Notice

[4] A fundamental principle of natural justice is to give notice to a person who may be affected by a decision of their right to be heard and to know the evidence against them so they can properly respond. Even so, the tribunal remains the master of its procedure and may choose the way notice is to be given, unless a statute specifies how notice must be given.

- *Charkaoui v. Canada (Citizenship and Immigration)*, [2007] 1 SCR 350, 2007 SCC 9
- *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 (Supreme Court of Canada)
- *Syndicat des Employés de Production d Québec et et l'Acadie v. Canada (Canadian Human Rights Commission)*, [1989] 2 SCR 879 (Supreme Court of Canada).

[5] Section 30 of the *Motor Dealer Act* details the various ways in which hearing notices may be served. Section 30.1 of the *Motor Dealer Act* deems when the service of a notice given under section 30 is deemed to be received, which is dependant on the method of service. In this case, sections 30(b)(ii) and (iii) are important:

### Service of notices and orders

**30** A notice or order required or permitted under this Act to be given or served on a person must be given or served in one of the following ways:

(b) if the person is an individual,

(ii) by sending a copy by ordinary mail or registered mail to the address at which the individual resides or to a forwarding address provided by that individual,

(iii) by sending a copy by electronic mail to the electronic mail address provided by the individual,

[Underlining added]

[6] The word “must” in this provision is interpreted as being imperative: section 29 of the *Interpretation Act*.

[7] In the email correspondence provided to me to show service of the Notice of Hearing, the Authority communicated with Mr. Mahfouz on June 17, 2019 by email

to advise him that a formal hearing would occur on July 26 and that a formal Notice of Hearing would follow. That same day, Mr. Mahfouz communicated by email “kindly forward all necessary paperwork to the following address” and provided a physical street address.

[8] When the Authority emailed Mr. Mahfouz the Hearing Notice on July 10, 2019, it advised him that if he still wished to receive a physical copy of the Hearing Notice and supporting evidence, to please advise and the Authority would do so. Mr. Mahfouz did not respond and has not responded to that email.

[9] The legal question is whether Mr. Mahfouz was served the Notice of Hearing in the manner required by the *Motor Dealer Act* and in consideration of the principles of procedural fairness? My answer to that is, no.

[10] When the Authority communicated with Mr. Mahfouz by email on June 17, 2019, advising him of the forthcoming formal hearing, that was appropriate as that is how the Authority and Mr. Mahfouz had been corresponding in relation to processing his salesperson application.

[11] However, when the Authority advised Mr. Mahfouz of the formal hearing, Mr. Mahfouz specifically provided a mailing address where the “paperwork”, Hearing Notice and supporting Licensing Report, was to be forwarded. This effectively triggered the service requirements of section 30(b)(ii) of the *Motor Dealer Act*. Given the imperative nature of section 30, the Authority was required to provide notice by mailing it to the address Mr. Mahfouz provided. There is no evidence to show why the Authority could not have done so, and it is a form of service noted in the *Motor Dealer Act*. Legally speaking, Mr. Mahfouz was not served notice as required by the *Motor Dealer Act*.

### **III. Decision**

[12] Based on the above, I must decline to render a decision until Mr. Mahfouz has been given notice in accordance with section 30(b)(ii) of the *Motor Dealer Act*. This matter is remitted back to the Authority to effect proper service consistent with this decision.

Dated: August 20, 2019

“Original is signed”

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Ian Christman, J.D., Registrar