



**Investigation File 18-04-011
Hearing File No. 19-04-003**

Neutral Citation No. 2019-BCRMD-012

**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**

RE:

Imad Abdullah Rashid

and

Imad Abdullah Rashid *c.o.b.* as Imad Rashid

**DECISION OF THE REGISTRAR OF MOTOR DEALERS
ON APPLICATION FOR RECONSIDERATION**

Date and Place of Decision: August 29, 2019 at Langley, British Columbia

By way of written submissions

I. Introduction

[1] Imad Abdullah Rashid applies for reconsideration of my Compliance Order and Notice of Administrative Penalty both dated July 17, 2019 and as detailed in my written reasons of June 20, 2019 in this matter (the "Decision").

[2] In the Decision, I found that Imad Abdullah Rashid personally and Imad Abdullah Rashid carrying on business as Imad Rashid:

- (a) acted as a motor dealer without being registered as a motor dealer contrary to section 3(1) of the *Motor Dealer Act* R.S.B.C. 1996, c. 316 ("MDA"),
- (b) failed to make statutory declarations to consumers as required by sections 21(2) and 23 of the *Motor Dealer Act Regulation*, B.C. Reg. 447/78 ("MDA-R"), and

- (c) committed deceptive acts or practices contrary to section 5(1) of the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2 (“BPCPA”) by not advising consumers about material facts [making the statutory declarations noted in (b)] regarding their purchase of a motor vehicle.

[3] As a result of those findings and upon assessing the specifics of the case, I made the following orders against Imad Abdullah Rashid personally and Imad Abdullah Rashid carrying on business as Imad Rashid, with liability being joint and several:

- (a) cease and desist acting as a motor dealer unless and until they were registered as motor dealers: section 26.02 of the MDA;
- (b) abide by the BPCPA: section 155 of the BPCPA;
- (c) refrain from committing deceptive acts or practices: section 155 of the BPCPA;
- (d) refrain from failing to state material facts to consumers before, during or after a consumer transaction: section 155 of the BPCPA; and
- (e) ordered they pay an administrative penalty in the amount of \$35,000: section 26.05 of the MDA.

[4] Under the legislation, Imad Abdullah Rashid personally and Imad Abdullah Rashid carrying on business as Imad Rashid had 30 days from July 17, 2019 in which to request a reconsideration.

[5] For the remainder of this decision, I will refer to Imad Abdullah Rashid personally and Imad Abdullah Rashid carrying on business as Imad Rashid, collectively, as Imad Rashid.

II. The Request for Reconsideration

[6] On July 22, 2019 Imad Rashid sent an email to the Authority noting he was given some notices from the Authority and he wished to request a reconsideration regarding hearing file 19-04-003. The email also notes he had spoken to Authority

staff who “urged” him to contact the Registrar’s Support Officer to request the reconsideration.¹

[7] On July 23, 2019, the Registrar’s Support Officer provided Imad Rashid with the details of the information he needed to provide and the requirement to provide “new” evidence in order that his request for reconsideration could be considered.²

[8] On August 12, 2019, Imad Rashid sent the Registrar’s Support Officer an email. He apologized for the lateness of his response and provided written submissions in support of his request for reconsideration. There were no attachments and no indication any documents would be sent in. Thus, the new evidence Imad Rashid relies on are contained in his email submissions.

[9] Imad Rashid’s submissions do not identify whether he is asking for the Compliance Order or the Notice of Administrative Penalty to be reconsidered, or both. I am proceeding on the basis he is asking that they both be reconsidered.

[10] Imad Rashid’s submissions do not identify the grounds for requesting reconsideration. I am proceeding on the basis that his new evidence would materially and substantially alter the terms of the Compliance Order and the amount of the administrative penalty.

III. Legal Principles

[11] The issued Compliance Order was made under the authority of both section 26.02 of the MDA and section 155 of the BPCPA. The Notice of Administrative Penalty was made under the authority of section 26.05 of the MDA.

[12] The legal requirements to be applied on the request for reconsideration are found in sections 26.11 and 26.12 of the MDA, and sections 180 to 182 of the BPCPA. The reconsideration provisions of the MDA and the BPCPA are substantively the same and so are the legal principles to be applied to a reconsideration under either Act.

[13] Under either the MDA or the BPCPA, I am only authorized to vary or cancel a Compliance Order or a Notice of Administrative Penalty if:

- (a) There is new evidence that did not exist at the time of the hearing; or

¹ I would note that both the Compliance Order and Notice of Administrative Penalty also provide this information.

² I would note that this information is also contained in the written reasons dated June 20, 2019 at paragraph 59.

- (b) New evidence has been discovered, which did exist at the time of the hearing, but could not have been discovered, if one exercised reasonable diligence to discover that evidence; and
- (c) The new evidence may substantially and materially alter the original determination(s).

[14] Given this legal requirement for there to be “new evidence” that may substantially and materially alter the original decision, the Registrar has adopted the following approach in reviewing a request for reconsideration:

- (a) The submitted evidence is reviewed to see if it meets the legislative test as being “new evidence”, as that term is defined in the legislation, and
- (b) If under (a), there is “new evidence”, an assessment is made to determine if that new evidence may substantially and materially alter the original determination(s), if it were accepted as true, in consideration of the grounds for the request.

[15] If both (a) and (b) are answered in the affirmative, a *prima facie* case (on the face of the request) has been made out that a reconsideration is appropriate and should proceed. If either (a) or (b) are answered in the negative, the legislative requirements to empower the Registrar to cancel or vary a prior determination will not have been met, and there is no utility in proceeding with a reconsideration.

- See *Harris v. Windmill Auto Sales et al.* (April 10, 2013, File 12-030, Registrar), request for reconsideration denied (August 20, 2013, File 12-030, Registrar) and affirmed by *Windmill Auto Sales & Detailing Ltd. v. Registrar of Motor Dealers*, 2014 BCSC 903 (BC Supreme Court).

IV. Discussion

(a) Summarizing the request

[16] In the email submissions of Imad Rashid, he essentially makes the following points (paraphrasing):

- (a) He admits to selling motor vehicles while not registered as a motor dealer, but explains he was not aware of that requirement,
- (b) He explains that he did not sell as many motor vehicles to consumers as I found in my June 20, 2019 decision. Imad Rashid says many were sold by

the dealer, he used some vehicles for parts, and he wholesaled the remaining vehicles, and

- (c) Once he was advised that he was not allowed to sell motor vehicles to consumers by the Authority's investigators, he stopped doing so.

[17] As I earlier noted, there are no documents to support any of these submissions.

(b) Presumed grounds for the request

[18] As Imad Rashid is admitting to selling motor vehicles as an unregistered motor dealer, I accept he has no issue with the term of the Compliance Order requiring he cease and desist doing so unless and until he is registered as a motor dealer. That legal requirement would exist irrespective of my Compliance Order.

[19] As Imad Rashid has admitted selling motor vehicles to consumers and does not deny failing to make the statutory declarations required by the MDA-R (a failure to state material facts), I accept he has no issue with the terms of the Compliance Order requiring that he abide by the BPCPA. That legal requirement would exist irrespective of my Compliance Order.

[20] Imad Rashid's submissions down play the number of vehicles he sold while not registered as a motor dealer. Those submissions also indicate he was unaware of the legal requirement to be registered and stopped when staff at the Authority advised him that he was breaching the MDA. I take from these submissions, that he believes the administrative penalty should be cancelled or at least reduced.

(c) The evidence is not "new", material or substantial

[21] In considering Imad Rashid's submissions, I find that none of the evidence provided is new evidence or newly discovered evidence that could not have been found with a reasonably diligent search.

[22] The Investigation Report in this case had attached to it a list of vehicles noted being sold by Imad Rashid. The evidence shows Imad Rashid was provided with that Investigation Report and given an opportunity to make submissions on those transactions before I made my Decision. Imad Rashid could have provided the response that he is now providing to me, for the written hearing that resulted in my Decision. The evidence of how he disposed of the motor vehicles and to whom is not "new evidence" as defined by and required by the legislation.

[23] As noted at paragraph 17 of my Decision, there were copies of purchase agreements and ICBC vehicle registrations noting the transfer of vehicles to individuals. I specifically noted one transfer going to a business and stated I was not considering that transaction. The statutory declaration by the dealer explaining those sales coupled with the documentary evidence do not indicate wholesale transactions as Imad Rashid notes; but consumer transactions.

[24] Any vehicles that were not sold to individuals, but used for parts only as Imad Rashid notes, would not be captured by purchase agreements to individuals and by the ICBC transfer documents. Those motor vehicles would not form part of my deliberations in my June 20, 2019 Decision.

[25] I cannot accept Imad Rashid's assertions he did not know he had to be registered as a motor dealer to sell motor vehicles. The scheme undertaken to obtain salvage motor vehicles from ICBC clearly requires knowledge of being a registered motor dealer in B.C. Imad Rashid's own submissions apparently admitting to acting as a wholesaler of motor vehicles, and not selling them to consumers, indicates an understanding of the industry and its licensing requirements.

[26] Imad Rashid's apparent admission to wholesaling vehicles, does not assist him. A person acting as a wholesaler must be licensed under the *Wholesaler Licensing Regulation*, B.C. Reg. 203/2017 and Imad Rashid is not so licensed. Effectively, Imad Rashid is saying that he is not breaking one law [acting as an unregistered motor dealer] but breaking a different law [acting as an unlicensed wholesaler] in relation to some of the motor vehicle transactions. That admission would not materially change my determinations - the Compliance Order or Notice of Administrative Penalty - even if I accepted that evidence, which I do not. Acting as a wholesaler while not licensed would also result in a cease and desist order and administrative penalties.

V. Decision

[27] Imad Rashid's request for reconsideration is denied. His request does not contain any new evidence as that term is defined in and required by the legislation. Even if any of it can be considered new evidence, it would not materially or substantially change the Compliance Order or the Notice of Administrative Penalty.

VI. Review of this Decision

[28] This decision on reconsideration may not be reconsidered: section 26.12(4) of the MDA and section 182(6) of the BPCPA.

[29] This decision may be reviewed by petitioning the B.C. Supreme Court for judicial review pursuant to the *Judicial Review Procedure Act* within 60 days of this decision being issued: section 7.1(t) of the MDA.

Dated: August 29, 2019

“Original is signed”

Ian Christman, Registrar