

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Department of Justice and Attorney General v Amiri*
[2019] QCAT 305

PARTIES: **DEPARTMENT OF JUSTICE AND ATTORNEY
GENERAL**
(applicant)

v

PRAVIS AMIRI
(respondent)

APPLICATION NO/S: OCR190-18

MATTER TYPE: Occupational regulation matters

DELIVERED ON: 3 October 2019

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: Member Howe

ORDERS:

- 1. Pravis Amiri's motor dealer's licence is suspended for a period of six months from date of order.**
- 2. Pravis Amiri pay a fine of \$1,000 to the Chief Executive, Department of Justice and Attorney-General within 30 days of the date of order.**
- 3. Pravis Amiri pay compensation of \$440 to Rachael Wasiak prior to and as a prerequisite condition of his licence being reinstated after the period of suspension.**

CATCHWORDS: PROFESSIONS AND TRADES – LICENSING OR REGULATION OF OTHER PROFESSIONS, TRADES OR CALLINGS – MOTOR VEHICLE TRADERS, DEALERS AND REPAIRERS – where the motor dealer failed to provide a purchaser of a used vehicle with a receipt for the deposit for a copy of the contract – where the motor dealer failed to provide required statements in writing concerning the vehicle to the purchaser – where the motor dealer failed to keep the requisite log of transactions – whether the motor dealer was a suitable person to hold a licence – where the motor dealer's behaviour were grounds for starting a disciplinary proceeding

Motor Dealers and Chattel Auctioneers Act 2014 (Qld), s 8, s 102(2), s 117(1), s 194

Motor Dealers and Chattel Auctioneers Regulation 2014
(Qld), s 16(2)

REPRESENTATION:

Applicant: Self-represented by R Vize, Principal Legal Officer
Respondent: Self-represented

APPEARANCES: This matter was heard and determined on the papers pursuant to s 32 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld)

REASONS FOR DECISION

- [1] Mr Amiri holds a motor dealers licence current through to 22 August 2019. He carries on business as a motor dealer at the Gold Coast trading as Gold Coast Automobiles. He has been referred to the Tribunal by the Chief Executive of the Department of Justice and Attorney General ('the Chief Executive') for disciplinary proceedings.
- [2] By s 193 of the *Motor Dealers and Chattel Auctioneers Act 2014* (Qld) ('the Act') the Tribunal has jurisdiction to hear and decide disciplinary matters involving a licensee or motor salesperson.
- [3] The grounds for starting disciplinary proceedings are said to be that Mr Amiri has breached a number of provisions of the Act,¹ and that he is not a suitable person to hold a licence.²

Circumstances of the offences

- [4] Ms Wasiak wanted to buy a car. On 27 May 2017 she went to Gold Coast Automobiles to inspect and possibly purchase a VW Beetle motor vehicle, registration number 967 XGH which she had seen advertised online on Gumtree.
- [5] According to Ms Wasiak when she first saw it, it had no rear windscreen. She was told (by a salesman other than Mr Amiri, whose identity, apparently, has never been established) it would be fixed and the car available in the coming week. The price was \$8,000.30. She was asked to put down a holding deposit of \$100 which she did. She was given a receipt for the \$100 and told if she didn't like the car she could have her deposit back. She was told the \$100 was simply to hold the car in case someone else wanted it.
- [6] On Saturday 3 June 2017 she returned but found the repairs had not been done. This time she dealt with Mr Amiri. He promised to fix the windscreen and repair wheel rims and have the vehicle ready by 10 June 2017 but only if she put down a deposit of \$2,000 to purchase the vehicle. She did that.

¹ Section 194(1)(b)(i).

² Section 194(1)(g)(i).

³ In the Chief Executive's material the is noted as \$8,700, which appears to be an error

- [7] Mr Amiri also had her enter into a 3-year after-market extended warranty with Integrity Warranty Insurance that day.
- [8] Mr Amiri didn't give her any paperwork for either the warranty or deposit. He didn't give her a contract for the purchase of the vehicle either. He told her nothing about a cooling off period she was entitled to.
- [9] By the following Monday 5 June 2017 she had decided she did not want to buy the car.
- [10] She spoke to Mr Amiri and told him that but he told her the cooling off period had expired⁴ and they were using her extended warranty to fix the transmission. She was surprised to learn about a transmission problem with the vehicle. That had not been mentioned previously.
- [11] She then asked for copies of documents because she only had the receipt for \$100 paid. Mr Amiri then gave her a receipt for the \$2,000 deposit.
- [12] Later that day she sent him an email saying she did not want to proceed with the purchase.
- [13] On 7 June 2017 Mr Amiri advised her by email that the cost of the repairs to the transmission would be \$2,000 but it would be claimed under the warranty. He told her to tell the warranty insurers that, if they telephoned her, she had purchased the car on Saturday 3 June 2017 and the transmission had started playing up. That she had taken the car back to Gold Coast Automobiles and they had organised a mechanic to look at the transmission.
- [14] On 8 June 2017 Mr Amiri sent another email to her informing her that the \$2,000 she had paid had been for the repair of the vehicle and that they were already working on the car using that money.
- [15] On 13 June 2017 she received an email from Mr Amiri stating he had decided to refund her deposit but would withhold \$440 to pay for the mechanic who had worked on the vehicle. She did not agree to that.
- [16] Ms Wasiak then contacted the warranty insurer and advised them what had occurred. Not surprisingly, they voided the warranty.
- [17] Eventually Mr Amiri paid her back \$1,600, keeping \$440.

Breaches

- [18] The Chief Executive says Mr Amiri has breached a number of provisions of the legislation governing the conduct of motor dealers.
- [19] First his failure to comply with s 16(2) of the *Motor Dealer and Chattel Auctioneers Regulation 2014* (Qld) which requires a motor dealer to promptly give a buyer, a prospective buyer or an option holder a receipt in relation to the purchase of a used motor vehicle with certain stated particulars required.
- [20] The receipt for \$100 did not comply with the required particulars.

⁴ Which was wrong.

- [21] Then on 27 May 2017 after agreeing to sell the used motor vehicle to Ms Wasiak, Mr Amiri failed to provide her with a written statement in the approved form about a used vehicle as required by s 102(2) of the Act.
- [22] The third suggested breach concerns the attendance of officers of the Chief Executive to conduct a compliance inspection at the dealership on 8 December 2017. Mr Wasiak failed to produce for inspection a transaction register recording transactions entered into by Gold Coast Automobiles, contrary to s 117(1) of the Act.
- [23] Given these breaches, and admissions made by Mr Amiri about the matters set out above, taking into account Mr Amiri's extensive history of similar breaches the Chief Executive submits there is a fourth ground to start disciplinary proceedings against Mr Amiri, namely, that by s 194(1)(g)(i) of the Act he is not a suitable person to hold a licence.
- [24] Mr Amiri has a history of previous offences under the Act and its predecessor.⁵ They range from acting as an unlicensed salesperson, to offences concerning failure to keep a transaction register, failure to give a buyer a statement of vehicle particulars or statement concerning a cooling off period available and failure to give a prescribed receipt. There are 12 such matters recorded against him with varying penalties imposed, from warnings to the last being a fine of \$455.
- [25] In the current matter the failure to give a receipt with necessary particulars is a breach under the Act.
- [26] The failure to provide Ms Wasiak with a statement about her rights to take advantage of a cooling off period and void the contract is also a clear breach and a significant one.
- [27] His failure to maintain and produce a transaction record is a breach under the Act and an offence he has committed and been breached for on 3 previous occasions.
- [28] Mr Amiri took part in an interview with officers of the Chief Executive. He conceded that he had not provided the necessary receipt for the deposit of \$100 and that he had not entered into a written contract.
- [29] Mr Amiri separately admitted to an officer of the department that he did not have a motor vehicle register available for inspection as required and that he had not provided Ms Wasiak with the required written statement in the prescribed form under s 102 of the Act.
- [30] Mr Amiri has, as stated, a history of previous breaches under the legislation. In one instance in 2016 a very similar complaint to that of Ms Wasiak's was made to the Chief Executive. The complainant there purchased a Holden Commodore vehicle from Mr Amiri on 4 April 2015 for \$10,000. Mr Amiri failed to provide that purchaser with the contract and a notice about statutory warranty at the time and also failed to transfer the vehicle into the purchaser's name.

⁵ *Property Agents and Motor Dealers Act 2000 (Qld) (Repealed).*

- [31] Mr Amiri filed a response to the referral by the Department but made no statement of explanation or excuse for his behaviour. He did not contest the suggested breaches of the Act now raised by the Chief Executive.
- [32] In his response he said Ms Wasiak ‘was in agreement to refund less cost of repairs carried out’. This seems to be a reference to his withholding \$440 when he returned part of her deposit. Mr Amiri attached to his response a copy of an email he sent to Ms Wasiak on 7 June 2017 replying to her request for copies of the warranty and contract. His response email is of some concern. He refused her request for documentation. Instead he said if she came in (to see him) he would run her through the terms and conditions.
- [33] Mr Amiri seems quite oblivious to his poor compliance with the requirements of the Act and what amounted to a fraudulent deception of the warranty insurer. In an email to Ms Wasiak of 16 June 2017 when he again refused to return the \$440 he kept from her deposit he stated that the ‘Acts’ [sic] were a waste of time and he took umbrage with what he said were lies told by her to the warranty company about not buying the vehicle and signing the warranty.
- [34] I accept the submission of the Chief Executive that Mr Amiri’s behaviour brings the motor dealing profession generally into disrepute. He either has poor understanding and limited insight into his obligations under the legislation governing his occupation or he simply does not care about obeying the law. Regardless of the cause, his conduct is unacceptable.
- [35] I am satisfied that Mr Amiri has breached the provisions of the Act in the three instances of suggested breach detailed above and accordingly find that grounds exist to take disciplinary action against him as a licensee under the Act in respect of those breaches.
- [36] Further, taking into account his history of similar breaches, I determine there is a fourth ground to take disciplinary action against him as a licensee, namely that by s 194(1)(g)(i) of the Act he is not a suitable person to hold a licence.

Sanction

- [37] Having made those findings based on the facts set out above an appropriate sanction must be imposed.
- [38] Clearly the financial penalties imposed to date have had little deterrent effect upon Mr Amiri. He shows little remorse for his behaviour. He has been the subject of previous disciplinary charges. The breaches involving a failure to supply required documentation are serious matters. Similarly, the failure to maintain a register of transactions.
- [39] The main objects of the legislation is to provide a system for licensing and regulating persons as motor dealers and motor salespersons that achieve an appropriate balance between the need to regulate for the protection of consumers and the need to promote freedom of enterprise in the marketplace. The object is achieved mainly by ensuring only suitable people with appropriate qualifications are licensed or registered and providing protection for consumers in their dealings with licensees and their employees.

- [40] The chief executive seeks an order that Mr Amiri pay a fine of \$1000, an order that his motor dealer licence be suspended for a period of six months from the date of order, and an order that he refund to Ms Wasiak the sum of \$440 before he is able to be reissued with a licence.
- [41] The sanctions sought, I conclude, are appropriate in the circumstances and certainly a period of suspension of licence is called for as too the payment of compensation in the amount of \$440 to Ms Wasiak before he is entitled to have his license reinstated from suspension. The fine of \$1,000 should be paid within 30 days of the order.