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New Car Dealers Association of BC

A personal message from Ken Smith
President/Registrar

Compensation Fund hit hard in 2008

Most of you will be aware by now that the Motor Dealer Customer Compensation Fund will soon be hit hard by claims from customers victimized by licensed dealers, one of which abused consignment sales agreements. By the time all of the eligible losses and related administrative expenses are tallied, the cost could be as high as \$1 million.

The Compensation Fund Legislation, which predates the formation of the VSA by almost 10 years, puts the burden for this squarely upon the shoulders of licensed dealers. It should be recalled that industry asked government to create such a fund, modelled after Ontario legislation, to replace a previous requirement that all dealers post a \$15,000 bond. The bond was found to be inadequate because customers needed a court order to collect and the amount was insufficient in situations where there were multiple claims.

Announcing the Fund in March, 1995, the Minister of Consumer Services, Hon. Joan Smallwood, said: "This protection covers buyers from registered dealers . . . one more reason why consumers should deal with licensed dealerships rather than unlicensed motor dealers."

A government news release added:

". . .the fund protects consumers if the new- or used-car dealership fails to return a trade-in, full payment, deposit or down payment when the dealer refuses to deliver a vehicle, can't deliver it because of a business failure, uses dishonest conduct or fails to provide clear title to the vehicle."

An independent Board of Directors, consisting of industry, public-at-large and government appointees has managed the Fund since it began in 1995.

The forerunner of the Motor Dealer Customer Compensation Fund, in the consumer field, was the Travel Agents Registration Act, a response by government to multiple scandals in the package tour travel business. Everyone engaged in marketing travel was obligated to pay into a government managed fund. This is now part of the mandate of an independent agency similar to the VSA.

Similar mechanisms are in place within most of the autonomously managed professions such as medicine, law, accounting, chiropractic and engineering, in most cases insurance funds to satisfy valid claims from aggrieved clients.

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The present challenge to our Motor Dealer Customer Compensation Fund came from two cases about which we have reported previously this year. Visit the VSA web site www.vehiclesalesauthority.com and see public news releases concerning JDM Wholesale Canada Ltd. of Delta and Southwest RV and Sport Ltd., a company with Vancouver Island locations at Sidney, Chemainus and Duncan.

The VSA investigation into JDM discovered that premiums for multiple extended warranties had never been sent to the insurance company; unpaid Provincial Sales Tax, imported vehicles sold to consumers but which later failed to meet Canadian standards and vehicles discovered to be in containers awaiting shipment out of the country, after a freeze order had been issued by the Registrar and enforced by the Supreme Court of B.C. Named in the orders were the company and its principals, James and Iain Robinson., who had fled to New Zealand by the time their dealership was in the hands of a receiver.

Frequently in the news of late and now the subject of an RCMP investigation is the case of Southwest RV and Sport Ltd. This company and its dealer principal, Kersti Clark, were first denied permission to conduct consignment sales, shortly after the company obtained a dealer licence in 2006. This new dealership lacked the obligatory three years of experience and demonstrable credibility.

Ms. Clark unsuccessfully challenged the Registrar's right to deny approval for consignment sales, losing at every round in a lengthy and costly process through different courts, but defying the lack of consignment approval and continuing to conduct this fashion of business. Finally, after multiple complaints, the Registrar sought a court order freezing the assets of the company and Ms. Clark, and putting a Receiver into the dealership. Amid calls from customers, the VSA and media, Kersti Clark also fled the country.

Problems involved customers who reported difficulty tracking either their vehicles or their money. There was even a complaint from one consignee that their RV had been rented out, without any of the proceeds paid to the rightful owner. VSA compliance officers have been able to reunite many of the complainants with the vehicles they had left with Southwest RV on a consignment basis, but it is expected that there will be several large claims to the compensation fund.

The Southwest RV situation demonstrates why we are so concerned about this area of activity, which also tries to hide behind other euphemisms. A new tactic is for a dealer to charge a client a "listing fee" as if the arrangement was merely advertising and promotion. But the listed vehicle sits on the dealer's lot awaiting inspection and customers are served by salespeople who, presumably, would expect their usual commission on a transaction.

This situation provides an opportunity for us to restate why consignment sales can be so problematic. This style of business allows a dealer to operate part or all of their business using the assets of private individuals. These assets are held in an effective trust based upon either a written or oral contract. However, section 2 of the Consignment Regulation mandates that a written agreement be in place on all consignment arrangements. The dealer undertakes considerable extra responsibility in a consignment situation and far too many disputes and misunderstandings come from this area. This is why only experienced dealers with exemplary records are awarded the privilege.

VSA criteria with respect to consignment sales are very clear. As Registrar, under the Motor Dealer Act, I am not obligated to approve any dealer to participate in consignment sales, but MAY do so if:

- In the case of established dealers, or salespeople who have a documented history of professional conduct, no consumer complaints or compensation fund claims, this authorization may be granted subject to letter of credit requirements and the dealer complying with the Motor Dealer Consignment Sales Regulation under the Motor Dealer Act.
- In the case of new dealer licence applicants, the time frame to review a request for consignment authorization will be three (3) years of continuous operation from the date the of licence being issued. The applicant may request a hearing to appeal to the Registrar for an exception to this requirement based on industry experience or other related factors.

The rules governing consignment sales constitute Directive 6 in the VSA "Dealer Directives" which can be found in the "INDUSTRY" section of the VSA web site.