

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: ***Southwest R.V. v. Motor Dealer Council of  
British Columbia,***  
2007 BCSC 1140

Date: 20070507  
Docket: 07-0486  
Registry: Victoria

Between:

Southwest R.V. and Sport Ltd.

Petitioner

And

The Registrar of the Motor Dealer Council of British Columbia

Respondent

Before: The Honourable Mr. Justice Wong

Oral Reasons for Judgment

In Chambers  
May 7, 2007

Counsel for the Petitioner:

B. Hallsor

Counsel for the Respondent:

I. Christman

Place of Trial/Hearing:

Victoria, B.C.

[1] THE COURT: This is an application for judicial review of a restriction placed by the Registrar of the Motor Dealer Council where the applicant, Ms. Clark, was granted a motor dealer's licence, but with a restriction of not being able to engage in consignment sales.

[2] Ms. Clark then asked for a hearing before the Registrar, and the transcript makes it quite clear that at that time the Motor Dealer Council was in the process of determining a policy concerning a restriction of consignment sales for new applicants. It is quite clear that, until they had formulated a threshold requirement, it is implicit from the remarks that Ms. Clark's application may be premature, even for reconsideration.

[3] I am told that since that hearing the Motor Dealer's Council has now brought in a policy of a two-year waiting period before any new dealer can even be considered for that purpose. It appears then to be a two-step threshold, and the first step is a two-year demonstration of being able to run a viable motor dealer operation. The second is whatever criteria that the particular applicant has to satisfy the granting of the condition to sell on

consignment basis.

[4] I have some sympathy for Ms. Clark since at the time she complained the policy was either inchoate or had not been established at that time, but, as pointed out to counsel, my observation is that until that policy has been promulgated one way or the other, the Motor Dealer Council may well then be operating on an ad hoc basis with respect to each applicant.

[5] A threshold had to be established and it has now been established in the public interest. It might be complained, as did counsel for Ms. Clark, that the two-year waiting period may be excessive in terms of the fact that consignment sales is not property of the consignee but remains the property of the vendor, and therefore that protection may be excessive. Be that as it may, that appears to be powers that have been sub-delegated by the legislature, and it applies to all.

[6] Accordingly, I am of the view that this is an area that clearly the registrar was entitled to do until the policy had been promulgated. It is unfortunate that Ms. Clark, at the time she went to the hearing, that policy was inchoate and had not been established, and therefore her application could not be considered to lift that restriction.

[7] As I mentioned to counsel, even if I was to order a reconsideration, it seems to me that, faced with the two-year limitation, until that expires, the reconsideration would be all for naught in any event since the first step of the threshold has been clearly established.

[8] Accordingly, the application for the judicial review is denied.

[9] Bearing in mind the novel situation Ms. Clark has found herself in in seeking this judicial review, do you have any position with respect to costs?

[10] MR. HALLSOR: My Lord, I do have some submissions. In the authorities it states that costs should not normally be awarded to or against a decision maker, being the Registrar, except in exceptional circumstances, and those circumstances do not exist in this case.

[11] THE COURT: All right. There will be no order as to costs.

[12] MR. CHRISTMAN: Thank you, Your Lordship

“The Honourable Mr. Justice Wong”