

**IN THE MATTER OF AN APPEAL BY**  
**HASSAN MAHFOUZ**  
**TO SECTION 127(c) and 6(4) OF THE**  
***FAIR TRADING ACT*, BEING CHAPTER F-2**  
**OF THE REVISED STATUTES OF ALBERTA, 2000**  
**and SECTION 12 OF THE *AUTOMOTIVE BUSINESS REGULATION*,**  
**Alta. Reg. 152/2013**

AND

**IN THE MATTER OF THE DECISION BY THE ALBERTA MOTOR  
VEHICLE INDUSTRY COUNCIL TO CANCEL THE AUTOMOTIVE  
SALESPERSON REGISTRATION UNDER THE *FAIR TRADING ACT*  
and *AUTOMOTIVE BUSINESS REGULATION* ON MARCH 10, 2014.**

**REASONS FOR DECISION**

Panel Chair: Wayne Paulsen  
Members: Chad Zender  
Vibishen (Ben) Iyer

Appeal Heard: April 28, 2014 and May 12, 2014  
CAPILANO CENTRE, 9945 – 50 Street, Edmonton, Alberta  
Main Floor Boardroom

**1. Introduction**

This is an appeal under S. 22 of the Automotive Business Regulation from a decision of the Director cancelling the salesperson registration of Mr. Hassan Mahfouz under section 6(4), and 127(a) and 127(c) of the Fair Trading Act along with section 12 of the Automotive Business Regulation.

**2. Jurisdiction**

The Fair Trading Act and the Automotive Business Regulation regulate, among other things, automotive business licences and salesperson registrations in Alberta.

Under s. 104 of the *Fair Trading Act*, no person may engage in the automotive sales business unless that person holds a licence that authorizes the person to engage in that business.

Pursuant to s. 16 of the *Automotive Business Regulation*, a salesperson of an automotive sales business operator must be registered for automotive sales before acting on behalf of the business operator.

The Director's jurisdiction with respect to automotive business licences and salesperson registrations is found in s. 127 of the *Fair Trading Act*:

127 The Director may refuse to issue or renew a licence, may cancel or suspend a licence and may impose terms and conditions on a licence for the following reasons:

- (a) the applicant or licensee does not or no longer meets the requirements of this Act and the regulations with respect to the class of licence applied for or held;
- (b) the applicant or licensee or any of its officers or employees
  - (i) fails to comply with an order of the Director under section 129 or 157, unless, in the case of an order under section 129 or 157, the order has been stayed,
  - (ii) fails to comply with a direction of the Director under section 151(5),
  - (iii) furnishes false information or misrepresents any fact or circumstance to an inspector or to the Director,
  - (iv) fails to comply with an undertaking under this Act,
  - (v) has, in the Director's opinion, contravened this Act or the regulations or a predecessor of this Act,
  - (vi) fails to comply with any other legislation that may be applicable,
  - (vii) fails to pay a fine imposed under this Act or a predecessor of this Act or under a conviction or fails to comply with an order made in relation to a conviction, or
  - (viii) is convicted of an offence referred to in section 125 or is serving a sentence imposed under a conviction;
- (c) in the opinion of the Director, it is in the public interest to do so.

This section applies to both automotive business licences and salesperson registrations. S. 18 of the *Automotive Business Regulation* states that s. 125, 127 and 128 of the *Fair Trading Act* apply, with necessary changes, to the registration of salespersons.

Section 22 of the *Automotive Business Regulation* states that:

22(1) A person

- (a) whose application for registration or renewal of registration has been refused,
- (b) whose registration is made subject to terms and conditions, or
- (c) whose registration has been cancelled or suspended under section 127 of the Act

may appeal in accordance with the process established by the Director.

(2) The Director may establish an appeal process for the purposes of subsection (1), including forming or designating an appeal body.

In accordance with s. 22(2) of the *Automotive Business Regulation*, AMVIC created the AMVIC Salesperson Appeal Committee Policy (the "Appeal Policy"). The Appeal Policy allows an Appellant to appeal a decision of AMVIC by delivering a written Notice of Appeal to the Executive Director within 30 days after AMVIC issues notice of its decision to the Appellant.

This is an appeal pursuant to s. 22 of the *Automotive Business Regulation*. Pursuant to 3 ii o) of the Appeal Policy:

The Panel shall determine if the decision by AMVIC that is the subject of the Appeal was consistent with the provisions of the Fair Trading Act, the Designation of Trades and Business Regulation, the Automotive Business Regulation, and the bylaws and policies of AMVIC.

### **3. Evidence before the Appeal Panel**

At the hearing, Mr. Hassan represented himself. AMVIC was represented by Ms. LuAnne Sirdiak, Senior Manager of Investigations.

Ms. Sirdiak reviewed the authority of the Director and the legislation relevant to the matter.

Ms. Sidriak outlined the circumstances that brought us to the appeal:

- Mr. Mahfouz was a registered salesperson with AMVIC
- The salesperson registration expired on January 31, 2014
- The Director sent notice to Mr. Mahfouz for Administrative Review pursuant to the FTA as the result of an AMVIC investigation.
- Mr. Mahfouz did not attend at the Administrative Review.
- The decision of the Director was to cancel the salesperson registration.
- Mr. Mahfouz submitted written notification to the Director of his desire to exercise his right under s. 22 of the Automotive Business Regulation to appeal the decision of the Director.
- The appeal panel was assembled and the appeal was scheduled for April 28, 2014 at 9:30 a.m.
- Mr. Mahfouz was notified of the appeal date in writing.

Ms. Sirdiak reviewed the circumstances of the AMVIC investigation which included an anonymous complaint being received indicating that Mr. Mahfouz had entered into a business transaction with another AMVIC licensed business regarding 4 vehicles. Mr. Mahfouz took possession of the 4 vehicles without paying for them and despite repeated promises, he has failed to pay the business for the vehicles that he took.

Mr. Mahfouz provided an outline of his experience in the automotive industry. Mr. Mahfouz doesn't understand how the business transaction that he entered into can affect his salesperson registration and he admits to contacting the business that he entered into the transaction with to correct the situation only after his salesperson registration was cancelled.

Mr. Mahfouz confirmed that he sold at least 2 of the vehicles retail to his wife and mother-in-law. Mr. Mahfouz collected money from his mother-in-law for the vehicle he sold to her. When his wife sold the vehicle that she "bought", she collected the money for that sale. Notwithstanding, no money was ever paid to the original business that Mr. Mahfouz received the vehicles from.

#### 4. Appeal Panel Decision

It is the decision of this Appeal Panel to uphold the decision of the Director to CANCEL the automotive salesperson registration of Hassan Mahfouz. The panel has based its decision on the following reasons:

The Panel found that Mr. Mahfouz was not entirely honest with what happened to the vehicles after he took possession of them.

The Panel found that Mr. Mahfouz was completely aware of the fact that his business was not licensed to sell vehicles retail, and as the only registered salesperson for the business, he sold vehicles retail anyway.

This panel is satisfied that the hearing given to Mr. Mahfouz has been exhaustive and fair. We have reviewed all of the evidence before us. We are satisfied that the panel's unanimous decision to uphold the original decision of the Director to cancel the salesperson registration of Mr. Mahfouz is in the best interest of the public at large and of the industry.

"Original signed by"

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Wayne Paulsen  
Chair – AMVIC Salesperson Appeal Committee

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Date