

IN THE MATTER OF AN APPEAL BY

RISHI VERMA

**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 APRIL 14, 2014.**

REASONS FOR DECISION

Panel Chair: Mr. W. Paulsen
Members: Mr. J. Holland
Mr. B. Kirkland

Appeal Heard: July 7, 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. Rishi Verma 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

- a. At the hearing, Mr. Verma was represented by Counsel, Ms. Megan Tupper, Student-at-Law. AMVIC was represented by Counsel, Ms. Vivian Stevenson.
- b. Ms. Stevenson reviewed the authority of the Director and the legislation relevant to the matter.
- c. Ms. Stevenson reviewed the decision of the Director of Fair Trading (as delegated) dated April 14, 2014:
 - i. Mr. Verma was a registered salesperson with AMVIC.
 - ii. The salesperson registration was expired from November 30, 2012 to December 13, 2013.
 - iii. AMVIC received a complaint regarding a business transaction and an investigation took place. Mr. Verma's salesperson registration was not current during the time of the complaint
 - iv. As a result of the investigation, the Director sent notice of an Administrative Review to Mr. Verma pursuant to the FTA.
 - v. Mr. Verma did not attend at the Administrative Review. Legal counsel for Mr. Verma did contact AMVIC on April 9, 2014 after the scheduled review time.
 - vi. The decision of the Director was to cancel Mr. Verma's salesperson registration.
- d. An Affidavit sworn May 6, 2014 by Mr. Verma was provided by his counsel, Ms. Tupper. It was the position of Ms. Stevenson that the Affidavit was not admissible as Mr. Verma was not in attendance at the hearing and was therefore unavailable to be cross-examined on the contents of the Affidavit. After discussion, the Panel agreed to allow the Affidavit into evidence and duly noted Ms. Stevenson's position.
- e. Ms. Tupper provided evidence on behalf of Mr. Verma:
 - i. Mr. Verma did not act with the intent to sell a vehicle without a proper AMVIC registration.
 - ii. Mr. Verma provided a different representation of the details in his Affidavit than those contained in the decision of the Director of Fair Trading (as delegated) dated April 14, 2014.
 - iii. Mr. Verma was provided with assurances from the dealership that they would look after renewing his salesperson registration with AMVIC.
 - iv. Mr. Verma provided his Counsel with assurance that he will take steps to show conduct that he is worthy of a registration.
 - v. Mr. Verma is willing to retake the salesperson course.
 - vi. Mr. Verma is willing to take steps to show good behavior but he is not here today.

- f. Ms. Stevenson provided evidence on behalf of AMVIC. Ms. Stevenson called Mr. Rudy Desmeules, AMVIC Investigator/Peace Officer, as a witness to give evidence. It was Mr. Desmeules testimony that Mr. Verma sold a vehicle to the complainant and arranged to have after-market accessories added by an outside vendor. Mr. Desmeules further confirmed that during the time of the transaction, Mr. Verma was not registered with AMVIC to sell cars.
- g. Mr. Desmeules' further evidence was he had spoken with an employee of the dealership and was advised that Mr. Verma would not have been provided with any assurance that the dealership would renew his registration.
- h. Ms. Stevenson called Mr. Patrick Hall, New Car Sales Manager for the store, as a witness to give evidence. Mr. Hall advised their dealership has a policy that all after-market work needs to be done by the dealership. It was also Mr. Hall's evidence that Mr. Verma took a vehicle from the dealership without proper authority. Mr. Hall further stated that Mr. Verma had repairs done to his vehicle by the dealership's service department and then attempted to take the vehicle without paying the service repair bill.
- i. Mr. Hall confirmed that the dealership policy is to pay for a new salesperson and assist them to register with AMVIC if they have never been registered before. With salespeople who have been registered with AMVIC, it is their responsibility to pay their registration fee and renew their registration.
- j. Mr. Hall confirmed that Mr. Verma was let go from his position due to professional misconduct.
- k. The notes from the AMVIC Consumer Affairs Tracking System (CATS) were entered into evidence. The notes highlight the several non-attendance issues Mr. Verma had with the required salesperson course.

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 Rishi VERMA. The panel has based its decision on the following reasons:

1. It is an agreed fact between the parties that Mr. Verma was selling vehicles at the time of the complaint when he was not registered to do so. Mr. Verma was previously registered with AMVIC and was very aware of the requirement to be registered. He attended at the Fair Trading Act course and had been working in the industry for some time.
2. Mr. Verma's professional conduct is a concern. Mr. Verma seems to lack the understanding of the importance of the regulatory role of AMVIC. It is one of AMVIC's mandates to administer an effective and efficiently mandatory licensing and registration program for automotive business and salespeople. It is noted that Mr. Verma did not attend at the initial Administrative Review, notwithstanding his counsel takes responsibility for this. Mr. Verma had an issue with attending the Fair Trading Act course when he initially applied for registration with AMVIC. The CATS notes indicate that he missed attending the course he was initially booked for and it took several booking arrangements by AMVIC staff before Mr. Verma finally attended the course.

Additionally, Mr. Verma did not attend this Appeal. The Panel is of the opinion that Mr. Verma does not consider any of these issues serious enough to attend.

3. Mr. Verma's conduct of arranging for after-market accessories to be done by someone other than his employer, using a vehicle from the dealership without the proper authority and attempting to have repairs done to his vehicle without paying for them was also taken into consideration.
4. Mr. Verma provided an Affidavit which outlined his version of the details of the events. His failure to attend at this Appeal does not allow the Panel to put much credibility to this evidence.
5. It was the suggestion of Mr. Verma's counsel that it is a shared responsibility between the salesperson and the business to ensure that a salesperson is properly registered. The Panel finds that if this is the case, then Mr. Verma did not fulfill his share of the responsibility.

This panel is satisfied that the hearing given to Mr. Verma 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. Verma is in the best interest of the public at large and of the industry.

"Original signed by"

Wayne Paulsen
Chair – AMVIC Salesperson Appeal Committee

July 17, 2014

Date