

IN THE MATTER OF AN APPEAL BY

GRANT STEVENSON

TO SECTION 127(c) OF THE *FAIR TRADING ACT*,
BEING CHAPTER F-2 OF THE REVISED STATUTES OF ALBERTA, 2000
AND THE *AUTOMOTIVE BUSINESS REGULATION*, Reg.152/2013.

AND

IN THE MATTER OF THE DECISION BY THE ALBERTA MOTOR
VEHICLE INDUSTRY COUNCIL ("AMVIC") TO SUSPEND THE REGISTRATION
OF THE APPELLANT AS AN AUTOMOTIVE SALESPERSON UNDER THE
FAIR TRADING ACT and *AUTOMOTIVE BUSINESS REGULATION* ON OCTOBER 27, 2015

REASONS FOR DECISION

Panel Chair: Cindy Clark
Members: John Shoulders
Ben Iyer

Appeal Heard: January 20, 2016
HOLIDAY INN EXPRESS – AVENIDA CONFERENCE ROOM
Main Floor, 12025 Lake Fraser Drive, Calgary, AB T2J 7G5

1. Introduction

This is an appeal under s. 22 of the *Automotive Business Regulation* from a decision of the Director to suspend the provincial automotive salesperson registration of Mr. Grant Stevenson under s. 127(c) of the *Fair Trading Act*.

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*:

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.

Section 127 of the *Fair Trading Act* applies to both automotive business licences and salesperson registrations.

Section 18 of the *Automotive Business Regulation* states that sections 125, 127 and 128 of the *Fair Trading Act* apply, with necessary changes, to the registration of salespersons.

Accordingly, section 22(1) of the *Automotive Business Regulation* states that:

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.

Section 22(2) states that the Director may establish an appeal process for the purposes of subsection (1), including forming or designating an appeal body.

In accordance with section 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 section 22 of the *Automotive Business Regulation*. Pursuant to section 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 the 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. Stevenson represented himself. AMVIC was represented by Stephanie P. [REDACTED] and [REDACTED].
- b. Ms. P. [REDACTED] reviewed the authority of the Director and the legislation relevant to the matter.
- c. Ms. P. [REDACTED] and Mr. [REDACTED] outlined the circumstances leading up to the appeal including repeated disregard on the part of Mr. Stevenson for the rules that govern his right to be registered as an AMVIC salesperson such as repeated failure to maintain a valid salesperson registration between 2008 and 2015. When Mr. Stevenson did finally apply to AMVIC to have his salesperson registration reinstated in October of 2015, AMVIC became aware of serious allegations against Mr. Stevenson as a result of his previous employment with a dealership.
- d. Mr. Stevenson admitted to pleading guilty to theft from his previous employer and admitted to having several occurrences where his salesperson registration had lapsed and was not renewed on time. Mr. Stevenson stated that he had never received a complaint from a customer while working as a salesperson or had he ever done anything to defraud or harm a consumer. He further stated that the theft from his employer was a terrible judgment error on his part and a mistake that he will continue to suffer the consequences.
- e. Mr. Stevenson gave the following evidence:
 - He was working as an automotive consultant with an automotive business at the time of his review on November 5, 2015. As a consultant, Mr. Stevenson trains salespeople on how to complete credit applications and what documentation is required.

- He had been criminally charged with fraud and theft over \$5,000.00 as a result of stealing 10 sets of tires and rims from his employer and selling them on Kijiji for his own personal gain. He made a bargain regarding the charges against him. He pled guilty to the theft charge and subsequently the fraud charge was dismissed.
- It was Mr. Stevenson's position that it had been the responsibility of the businesses that he worked for over the last 10 years to renew his salesperson registration. He does not recall a time when he was required to renew his own registration.

4. **Appeal Panel Decision**

The decision of the Director of Fair Trading (as delegated) dated November 6, 2015 suspends the registration of Mr. Stevenson. As Mr. Stevenson's registration was not valid at the time of the decision, it was unable to be suspended. In this regard, AMVIC provided Mr. Stevenson with notice on January 14, 2016, that AMVIC would be asking the appeal panel to refuse Mr. Stevenson's application to have his salesperson registration reinstated.

It is the decision of this Appeal Panel to allow AMVIC's request to refuse Mr. Stevenson's application for reinstatement of his provincial automotive salesperson registration.

The Panel has based its decision on the following reasons:

- The Panel found that it was in the public interest under s. 127(c) of the *Fair Trading Act* to refuse Mr. Stevenson's application for reinstatement of his salesperson registration at this time.
- Mr. Stevenson admitted to selling vehicles without a valid salesperson registration. The Panel found that Mr. Stevenson had been in the industry long enough to be aware of the registration requirements including maintaining his registration on a yearly basis. Mr. Stevenson completely disregarded the registration requirements and only applied to have his registration reinstated when required to do so by his employer.
- The Panel also found that as Mr. Stevenson held a senior role (sales manager) with this previous employer, he knew or ought to have known the salesperson registration requirements for himself and his sales staff.
- Mr. Stevenson has not shown conduct acceptable for an AMVIC registered salesperson. Mr. Stevenson was in a position of trust with his employer yet admitted to stealing from his employer for personal gain. Theft from an employer is a very serious crime and carries a high degree of moral blameworthiness.
- Mr. Stevenson noted in his evidence that he had not defrauded a consumer during his time as a salesperson. The Panel does not carry the same view of Mr. Stevenson's crimes and when questioned about selling goods to a consumer that were not his to sell, Mr. Stevenson acknowledged that this may in fact be defrauding a consumer.

This Panel is satisfied that the hearing given to Mr. Stevenson has been exhaustive and fair. We have reviewed all of the evidence before us. We are satisfied that the panel's

unanimous decision to refuse Mr. Stevenson's application for reinstatement of his salesperson registration is in the best interests of the public at large and of the industry.

The Panel also recommends that Mr. Stevenson only be allowed to submit an application for registration as a provincial salesperson once the period of five (5) years has passed from the date this appeal hearing was held.

"original signed by"

Cindy Clark

Chair – AMVIC Salesperson Appeal Committee

Feb 10/16

Date