



ALBERTA MOTOR VEHICLE
INDUSTRY COUNCIL

#303, 9945-50 STREET, EDMONTON, ALBERTA T6A 0L4

www.amvic.org

Phone: 780-466-1140
Toll Free: 1-877-979-8100
Fax: 780-462-0633

August 18, 2015

Administrative Review – 15-06-012

Served - Personally

[REDACTED]

MONIER AHMED ELSAFADI
9824 – 169 AVENUE
EDMONTON AB T5X 3A4

Dear Mr. Elsafadi:

Re: Provincial Automotive Salesperson Registration #S1040524

As the Director of Fair Trading (as delegated), I am writing to you pursuant to section 158.1 of the *Fair Trading Act* (FTA). This letter will detail the action being taken under section 158.1.

Facts

Taking into consideration your representations and the information collected by AMVIC, I find the facts to be as follows:

- A. Mr. Elsafadi was initially registered with AMVIC on January 21, 2013 as a salesperson authorized to act on behalf of a wholesale business. Mr. Elsafadi's registration was automatically moved to an inactive status when he was no longer authorized to act on behalf of any business operator effective January 29, 2015 as per the Automotive Business Regulation (ABR), section 16(8). A wholesale business is not licensed to sell vehicles retail.
- B. An administrative review was held on July 14, 2015 at approximately 9:25 a.m. Mr. Elsafadi failed to appear at the review. In attendance at the review were Craig D. - AMVIC Investigator, Derek B-S. - AMVIC Senior Manager of Investigations and J. Bachinski - Director of Fair Trading (as delegated). Mr. Elsafadi had been sent notice of the review by e-mail and regular post. Mr. Elsafadi was also called by telephone at the phone numbers provided on his registration file and phone messages were left for him to call AMVIC. There was no response from Mr. Elsafadi with regard to the AMVIC administrative review.
- C. On December 22, 2014 Mr. Elsafadi sold a 2006 BMW X5 to consumer (PS) for the sum of \$9,300.00. The vehicle had approximately 157,000 km on it at the time of sale. Mr. Elsafadi was not registered to sell vehicles retail as his salesperson registration was associated with a business that is only licensed to sell wholesale. Mr. Elsafadi had also advertised the BMW for sale on Kijiji which would lead to a retail sale.

- D. In accordance with section 15 of the Vehicle Inspection Regulation (VIR), a Mechanical Fitness Assessment (MFA) must be given to the buyer prior to the sale of the vehicle. In this case, Mr. Elsafadi failed to provide a MFA to the consumer prior to sale or at any time.
- E. The vehicle was from another province and did pass an out of province inspection.
- F. Shortly after the consumer purchased the vehicle, significant mechanical and body related problems began to show up. An independent inspection was completed by the consumer and the inspection indicated the required repairs are so significant that they may exceed the value of the vehicle. There are very serious concerns regarding the safety of this vehicle and at this time, the vehicle is parked as it is not roadworthy.
- G. The Supplier indicated to the consumer that he had owned the vehicle for approximately one year. The AMVIC investigation has discovered that the vehicle was purchased at auction by another business on August 27, 2014. The vehicle was then sold to the Supplier which indicates that the information the Supplier provided to the consumer was misleading. The evidence gathered by AMVIC investigators clearly shows that the Supplier did not own the vehicle for a year as he had stated and had provided misleading information to the consumer.
- H. The history of the BMW indicates that it had been stolen and had been in at least one accident. Further, the vehicle was sold through the auction as a "red light" vehicle and "as is" which is an indication that the vehicle was not in good condition at the time of sale. None of this information was provided to the consumer at the time of sale.

Legislation

Fair Trading Act

Unfair practices

Section 6

(3) It is an unfair practice for a supplier

- (a) to enter into a consumer transaction if the supplier knows or ought to know that the consumer is unable to receive any reasonable benefit from the goods or services;
- (b) to enter into a consumer transaction if the supplier knows or ought to know that there is no reasonable probability that the consumer is able to pay the full price for the goods or services;
- (c) to include in a consumer transaction terms or conditions that are harsh, oppressive or excessively one-sided;
- (d) to make a representation that a consumer transaction involves or does not involve rights, remedies or obligations that is different from the fact.

(4) Without limiting subsections (2) and (3), the following are unfair practices if they are directed at one or more potential consumers:

- (a) a supplier's doing or saying anything that might reasonably deceive or mislead a consumer;

- (h) a supplier's representation that goods have or do not have a particular prior history or usage if that is different from the fact;

Licence required – designated businesses

Section 104

(1) No person may engage in a designated business unless the person holds a licence under this Act that authorizes the person to engage in that business.

Automotive Business Regulation

New classes of licence

Section 3

(7) A person who holds an automotive business licence is not authorized to carry on any class or classes of activities that are not specified on the licence.

Registration

Section 16

(1) A salesperson of an automotive sales business operator must be registered for automotive sales before acting on behalf of the business operator.

(8) The registration of a salesperson is automatically cancelled where the salesperson is no longer authorized to act on behalf of any business operator.

Vehicle Inspection Regulation

Sale of out of province motor vehicle

Section 14

A person shall not sell a motor vehicle that is an out of province motor vehicle unless, before the sale,

- (a) the person provides the buyer with a subsisting out of province motor vehicle inspection certificate for the motor vehicle, or
- (b) the person provides the buyer with a written statement advising that the motor vehicle is an out of province motor vehicle for which there is no subsisting out of province motor vehicle inspection certificate.

Sale of used motor vehicle

Section 15

(1) Subject to subsection (2), a dealer in used motor vehicles shall, before entering into a contract to sell a motor vehicle, give to the buyer a used motor vehicle mechanical fitness assessment that contains the following:

- (a) a statement identifying the type of motor vehicle as a truck, motorcycle, bus, van, light truck, automobile or other type of motor vehicle;
- (b) a statement showing the make, model, year, vehicle identification number, odometer reading in kilometres or miles, licence plate number and province of registration of the vehicle;
- (c) the name and address of the dealer selling the vehicle and the name of the technician who issued the mechanical fitness assessment;
- (d) a statement that the mechanical fitness assessment expires 120 days after the date on which it was issued;
- (e) a statement certifying that at the time of sale the motor vehicle
 - (i) complies with the *Vehicle Equipment Regulation (AR 122/2009)*, or
 - (ii) does not comply with the Vehicle Equipment Regulation (AR 122/2009) and containing a description of the items of equipment that are missing or do not comply with the *Vehicle Equipment Regulation (AR 122/2009)*;
- (f) the signature of the technician who conducted the mechanical fitness assessment;
- (g) the date the mechanical fitness assessment was issued

Fair Trading Act

Administrative Penalties

Notice of administrative penalty

158.1(1) If the Director is of the opinion that a person

- (a) has contravened a provision of this Act or the regulations, or
 - (b) has failed to comply with a term or condition of a licence issued under this Act or the regulations,
- the Director may, by notice in writing given to the person, require the person to pay to the Crown an administrative penalty in the amount set out in the notice.

(2) Where a contravention or a failure to comply continues for more than one day, the amount set out in the notice of administrative penalty under subsection (1) may include a daily amount for each day or part of a day on which the contravention or non-compliance occurs or continues.

(3) The amount of an administrative penalty, including any daily amounts referred to in subsection (2), must not exceed \$100 000.

(4) Subject to subsection (5), a notice of administrative penalty

shall not be given more than 3 years after the day on which the contravention or non-compliance occurred.

(5) Where the contravention or non-compliance occurred in the course of a consumer transaction or an attempt to enter into a Consumer transaction, a notice of administrative penalty may be given within 3 years after the day on which the consumer first knew or ought to have known of the contravention or non-compliance but not more than 8 years after the day on which the contravention or non-compliance occurred.

Analysis – Did Monier Ahmed ELSAFADI engage in an Unfair Practice contrary to the FTA, ABR and VIR?

1. It is very clear that Mr. Elsafadi is operating as a curber (not AMVIC licensed or registered to sell vehicles to consumers (retail)) and placing consumers at risk by selling an unsafe vehicle that is not considered roadworthy. Evidence was provided at the review that indicated Mr. Elsafadi has placed approximately 74 ads for vehicles for sale when he is not licensed to sell vehicles in the Province of Alberta.
2. Mr. Elsafadi failed to disclose to the consumer the past history of the vehicle and the poor condition the vehicle was in at the time of the sale. The vehicle was not properly repaired from the last accident and it has electrical problems. Additionally, the engine code light is on, the engine misfires, the headlights are not aligned or properly attached, the hood does not latch properly causing it to hit the windshield, and there are numerous oil leaks to just mention some of the problems with this vehicle. The BMW was never registered to Mr. Elsafadi as he suggested to the consumer who purchased the vehicle from him in good faith.
3. Mr. Elsafadi has not taken any steps to mitigate this situation or accept responsibility for his actions. The BMW now sits at the residence of the consumer and is not drivable in its present condition. The cost of repairs to make the vehicle roadworthy may exceed the value of the vehicle. Mr. Elsafadi also failed to respond to the AMVIC Investigator regarding the investigation file and he did not appear or provide a written response at his AMVIC administrative review. In response to the proposed Administrative Penalty, Mr. Elsafadi has indicated that the BMW was the only vehicle sale that he was involved in while evidence indicates that Mr. Elsafadi has been curbing a number of vehicles.
4. It is apparent the consumer has lost the full amount of the purchase price for the vehicle and the money spent to have the vehicle assessed which is estimated at close to \$10,000.00. The cost of the AMVIC investigation for this file is \$2,710.00. The specific vehicle in this complaint was purchased by Mr. Elsafadi for \$4794.83 and sold to the consumer for \$9300.00. This results in an approximate income of \$4,700.00 on the sale of just one vehicle.

Action

In accordance with section 158.1(a) of the FTA and based on the above facts, I am requiring Monier Ahmed ELSAFADI pay an administrative penalty. This is based on my opinion that Monier Ahmed

ELSAFADI contravened sections 6 and 104 of the FTA, sections 3 and 16 of the ABR, and sections 14 and 15.1 of the VIR.

After taking into consideration all of the representations made by Investigators Derek B-S. (Senior Manager of Investigations) and Craig D. (Investigator) and reviewing the documentation received from Monier Ahmed ELSAFADI, the administrative penalty amount is **\$10,000.00**. This amount takes into consideration the significance of the value of the vehicle involved, the volume of business it appear that Mr. Elsafadi is operating illegally and the safety risk to consumers when buying a used car from him.

The amount of this administrative penalty is \$10,000.00.

Pursuant to section 3 of the *Administrative Penalties (Fair Trading Act) Regulation*, **this administrative penalty must be paid within 30 days of service of this notice. Payment may be made to the Government of Alberta and sent to AMVIC at:**

Suite 303, 9945 – 50th Street
Edmonton, AB T6A 0L4.

Section 179 of the FTA allows a person who has been served a notice of administrative penalty to appeal the penalty. To appeal the penalty, the person must serve the Minister of Service Alberta

Minister of Service Alberta
Room 204 Legislature Building
10800 - 97 Avenue
Edmonton, AB T5K 2B6

with a notice of appeal within 30 days after receiving the notice of administrative penalty. The appeal notice must contain your name, your address for service, details of the decision being appealed and your reasons for appealing.

Pursuant to section 180(4) of the FTA, service of a notice of appeal operates to stay the administrative penalty until the appeal board renders its decision on the appeal or the appeal is withdrawn.

Under section 4 of the *Administrative Penalties (Fair Trading Act) Regulation*, the fee for appealing an administrative penalty is the lesser of \$1000 or half the amount of the penalty. As such, the fee for an appeal of this administrative penalty, should you choose to file one, would be \$1,000.00.

Yours truly,

"original signed by"

Jolyn Bachinski
Director of Fair Trading (as Delegated)

JB/kl

cc: [REDACTED], Sr. Manager of Investigations, AMVIC