



ALBERTA MOTOR VEHICLE
INDUSTRY COUNCIL

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July 27, 2016

Administrative Reviews – 16-02-016
16-02-018

[REDACTED]

1366675 ALBERTA LTD.
operating as EASY MOTORS
12560 FORT ROAD NW
EDMONTON, AB T5B 4H8

Attention: Stanley Igiwa and Nasu Saffa

Dear Sirs:

Re: 1366675 Alberta Ltd. operating as Easy Motors
Automotive Business Licence #B1028163

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. At the time of the complaint, the Supplier was licensed by AMVIC to carry on the automotive business of used retail sales and wholesale.
- B. An administrative review was held on March 15, 2016, at approximately 2:00 p.m. at the Edmonton AMVIC office. In attendance at the review were Mr. Igiwa, [REDACTED] – AMVIC Investigator, [REDACTED] – AMVIC Sr. Manager of Investigations, and J. Bachinski - Director of Fair Trading (as delegated). The review was based on two separate complaints.
- C. Complaint 1 - On May 6, 2015, the complainant, [REDACTED] purchased a 2007 Ford F150 truck from the Supplier. The 2007 Ford was sold through a wholesale auction and designated by the auction as a "red light" vehicle which usually means there may be mechanical issues with the vehicle and it is sold "as is". The advantage of a vehicle being sold at auction as a "green light" vehicle means it is good mechanical condition and as a result the vehicle will usually sell for a higher price. The Supplier often buys vehicles from auctions and would be aware of the risks involved in buying "red light" vehicles. These risks often include high mileage vehicles and undisclosed mechanical

issues. Most dealers in Alberta use auctions as a way of disposing of vehicles with previous accident history or mechanical concerns rather than selling the vehicle directly to consumers. Shortly after the purchase, on May 8, 2015, the complainant returned to the Supplier and traded in the vehicle due to engine failure.

- D. The complainant, ■■■, traded the 2007 Ford for a 2008 Ford F150 from the Supplier on May 8, 2015. The 2008 Ford F150 was purchased from a large wholesale auction and it was also designated by the auction as a "red light" vehicle. Red light means it is sold "as is" and may have mechanical issues. The mileage was recorded by the auction at 232,976 kilometers. In this sale it was noted by the auction that the vehicle had

"High KMS, small whole [sic] in roof from antennae, small hole in dash, SRS light on and tire pressure light on. The SRS system is related the restraint system in the vehicle and may be related to airbags not functioning properly".

At the time the complainant purchased the vehicle from the Supplier it had 233,030 kilometers. The information provided by the auction contains vital information that should have been disclosed to any consumer at the time of the vehicle purchase.

- E. The Supplier indicated on the Bill of Sale (BOS) for the 2008 Ford F150:
"Customer is given one week with new truck. If by chance they Persist problems with Engine Bring back for Refund. May 15th, 2015 Due date [sic]".

The complainant brought the vehicle back later the same day after having an independent inspection completed at a recognized large service repair business. The mechanical inspection indicated that the vehicle required mechanical repair on the engine. The repair estimate indicates

"Internal engine sound, off idle, possible timing chain on Lifters, during road test noise was very severe, air bag light on".

The cost incurred by the complainant to have the inspection completed was \$170.05. The mileage indicated on the inspection invoice is 233,052 kilometers. The Supplier does not deny the wording on the BOS; however he refused to refund the complainant as agreed upon on the BOS because he did not accept the mechanical assessment done by the repair business.

On May 12, 2015, the Supplier had the vehicle checked at the service repair location that he regularly conducts business with. The report indicated:

"road tested vehicle, engine has no surging. Power was smooth and linear. Scanned engine for DTC's found no current or history trouble codes, no misfire found engine vacuum test was flawless, no dropout in gauge which indicates all cylinders are contributing".

The Supplier paid \$47.25 for this mechanical inspection and no mileage for the vehicle was recorded on the invoice.

A third inspection was done by a Ford dealership. The inspection was completed on January 11, 2016 and the vehicle was reported to have 233,102 kilometers on it. This indicates the vehicle had only been driven an additional 50 kilometres since the first inspection completed on May 8, 2015. The inspection completed by the certified Ford dealer indicated:

"S12EC Electrical components – 233102 Tech 3232 inspect and found 2 VCT solenoid is bad".

The cost of the inspection was \$363.64 and the estimated cost of repairs was \$1,495.36. The writer understands that the vehicle now sits abandoned.

- F. Complaint 2 -The complainant, [REDACTED] purchased a 2006 Chrysler Pacifica from the Supplier on December 28, 2013. The purchase price was \$6,000.00 and the vehicle was reported to have 189,900 kilometers on it.
- G. The Supplier purchased the vehicle at a large wholesale auction for \$3,559.50. The vehicle was designated as a "red light" which indicates the vehicle was being "sold as". The auction report indicates it was sold "as is" and had 188,907 kilometers on it. In Alberta, auctions are regulated by Service Alberta, not AMVIC. While AMVIC licensed dealers are required to complete a mechanical fitness assessment (MFA) on all used vehicles sold retail, dealers are not required to complete a MFA when selling a vehicle at an auction.
- H. The MFA provided to the complainant [REDACTED] was signed and dated by the technician on October 23, 2013. However, the Supplier did not purchase the vehicle from the auction until November 19, 2013. The technician, [REDACTED], performed MFA inspections for the Supplier at a cost of approximately \$35.00-\$45.00 per vehicle. The technician indicated the Supplier would pay him by either cheque or cash for his service. There are no records available from the Supplier to determine what specific vehicle inspections have been paid for and when. The technician has indicated to AMVIC that he no longer provides inspections to the Supplier as he was concerned that his reports were being altered after he had completed and signed them. The Supplier indicated the date was just an error but was unable to provide documentation for when the inspection was completed to support his position that the date was in error.
- I. On September 28, 2014, the vehicle was taken to a Chrysler dealership for an oil change and minor repairs. There were no safety issues or a cracked frame reported with the vehicle during this inspection. The mileage on the vehicle was reported at 205,777 kilometers.
- J. On March 3, 2015, the complainant [REDACTED] took the vehicle for an oil change and a complementary inspection was done. The inspection indicated that the vehicle was unsafe to drive due to cracks being discovered in the frame and front end of the vehicle. The mileage on the vehicle was recorded at 217,205 kilometers.
- K. On March 3, 2015, the 2006 Chrysler Pacifica purchased by [REDACTED] was deemed unsafe by Alberta Transportation as a result of a rotted and cracked frame. Alberta Transportation indicated that the damage had been present for an extended period of time.
- L. The Supplier indicated at the review that he takes no responsibility for either vehicle and has not offered any resolution regarding the matters at hand.
- M. AMVIC was advised that the technician's business records are not available as all his business records were stolen from his vehicle.
- N. The Supplier provided a detail response on May 26, 2016. The Supplier's response was reviewed in detail and the final administrative penalty takes into account the representations

made by the Supplier. Attached hereto and marked as Exhibit "1" is a copy of the May 26, 2016 response.

Legislation

Vehicle Inspection Regulation (VIR)

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.

(1.1) Despite section 1(1)(r), for the purposes of subsection (1), "technician" means a person who,

- (a) in the case of a mechanical fitness assessment of passenger vehicles and light trucks, holds a subsisting trade certificate in the designated trade of automotive service technician under the Apprenticeship and Industry Training Act, or

Automotive Business Regulation (ABR)

Records

Section 9

In addition to the requirement to create and maintain financial records in accordance with section 132(1) of the Act, every business operator and former business operator must maintain all records and documents created or received while carrying on the activities authorized by the licence for at least 3 years after the records were created or received.

Fair Trading Act (FTA)

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;
- (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;
 - (b) a supplier's misleading statement of opinion if the consumer is likely to rely on that opinion to the consumer's disadvantage;
 - (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;

Duty to maintain records

Section 132

- (1) Every licensee and former licensee must create and maintain
 - (a) complete and accurate financial records of its operations in Alberta for at least 3 years after the records are made, and
 - (b) other records and documents described in the regulations for the period specified in the regulations.
- (2) Every licensee and former licensee must make the records referred to in subsection (1) available for inspection by an inspector at a place in Alberta and at a time specified by the inspector..

Administrative Penalties

Notice of administrative penalty

Section 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.

Right to make representations

Section 158.2

Before imposing an administrative penalty in an amount of \$500 or more, the Director shall

(a) advise the person, in writing, of the Director's intent to impose the administrative penalty and the reasons for it, and

(b) provide the person with an opportunity to make representations to the Director.

Analysis – Did 1366675 Alberta Ltd. operating as Easy Motors engage in an Unfair Practice contrary to the *Fair Trading Act*, *Automotive Business Regulation (ABR)*, and *Vehicle Inspection Regulation (VIR)*?

1. On September 15, 2014, the Supplier entered into an Undertaking with the Director of Fair Trading (as delegated) for related business practises and disclosure concerns that AMVIC has identified regarding the Supplier's current matters. The Supplier undertook to keep full and complete records that ensure consumers receive the appropriate disclosure. As well, the MFA must be done by a qualified technician and the MFA form must be properly filled out. In the previous Undertaking, four separate consumers had come forward with vehicles experiencing serious mechanical issues. Less than two years have passed and two more consumers with vehicles that have serious mechanical issues and where both vehicles are no longer operational. The Supplier has chosen not to comply with the Undertaking he voluntarily entered into.
2. For complaint 1, the Supplier acknowledged on the BOS was the condition that a refund would be provided to the consumer if there were problems with the engine. The condition placed on the BOS does not require the consumer to meet a standard of proof above what would be considered reasonable proof of the condition of the engine. There are two independent reports completed by fully trained technicians that support the position taken by the complainant and evidence that the vehicle requires mechanical repairs on the engine. The Supplier on the other

hand had an estimate completed by a service repair business he does business with at a cost of only \$47.50. The writer gave this estimate less credibility as it lacked details in what was inspected, the cost of the inspection and the results. As well, the estimate was not obtained from an independent service repair facility. While the Supplier has indicated that a reasonable observer would accept that there is not enough evidence, the writer would suggest that there is more than adequate evidence from 2 independent sources regarding the fact the engine is not working properly. While the specific reason why the engine is not operating properly is unclear, it is clear from the estimates that there is a problem with the engine. This assessment adequately meets the conditions as determined on the Bill of Sale as agreed to by the Supplier.

3. The analysis completed by a certified dealer for the specific manufacturer of the vehicle in question would hold the highest credibility. The specific parts that require replacement are related to the timing of the engine and its performance. It is the opinion of the writer that the Supplier should fully refund the consumer and the vehicle returned to the Supplier. In his response, the Supplier feels the engine's condition is acceptable and if repairs are required they are not related to the engine.
4. For complaint 2, the Supplier indicated he was unable to provide a properly completed MFA for the vehicle. He was also unable to provide any evidence to support when the MFA was actually completed. The Supplier must ensure that the mechanic they engage to complete the MFA is qualified to complete the MFA and that the MFA is completed in full as per section 15.1 of the VIR.
5. The Supplier indicated that key records were not available to support his position that the MFA was dated in error. This is a reflection of his inadequate record keeping. Section 132 of the FTA and section 9 of the ABR places the onus on the Supplier to keep complete records and in the absence of complete records the consumer receives the benefit of the doubt. The onus is clearly on the Supplier to keep proper records, which includes documentation of the inspection completed to prepare the MFA. Suppliers are required under the FTA to ensure that they provide full disclosure of which a properly filled out MFA pursuant to section 15.1 of the VIR is only part of the disclosure process. The Supplier also receives a car history report on every vehicle sold at wholesale auction and the legislation clearly places the onus on the dealer to share that information with the consumer. In this case, there was no evidence presented by the Supplier that he had disclosed the critical information necessary for a consumer to make a reasonable decision on purchasing the vehicle. The Supplier is in the business of selling high mileage used cars and needs to ensure that full disclosure is made on each vehicle he sells prior to completing the sale.
6. The Supplier specializes in buying "red light", high mileage vehicles at wholesale auctions. Many of these vehicles have known mechanical problems, some safety related such as air bags not working. The Supplier then sells some of these vehicles to consumers without disclosure being made or the proper repairs being completed. This practise must stop immediately. Section 6(4)(h) of the FTA states it is an unfair practice for a Supplier to make a representation "that goods have or do not have a particular prior history or usage if that is different from the fact". Consumers are relying on the honesty and integrity of dealers when purchasing a vehicle. The FTA was established to protect consumers and to ensure AMVIC licensed businesses adhere to that legislation.

7. The FTA section 6(3)(a) states that "it is an unfair practice for a supplier 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 service. Complainant [REDACTED] purchased from the Supplier a vehicle that does not run properly. It was driven very few kilometres and now sits unused. There was no benefit to the consumer on this purchase. With respect to the second complaint, Complainant [REDACTED] did get some use out of his vehicle although he is still left with a vehicle that has been declared unsafe by Alberta Transportation and he is now left with a vehicle that has only salvage value.
8. The Supplier has raised in his response that AMVIC is requiring that "the Supplier has a positive duty to ensure that the Supplier's vehicles sold meet some standard that is not articulated". AMVIC is ensuring that the proper disclosure is made when selling a vehicle. AMVIC is responsible to enforce both the Traffic Safety Act and the Vehicle Inspection Regulation in addition to the Fair Trading Act and its Regulations. The Supplier cannot sell an unsafe vehicle to a consumer and the Supplier must ensure that full disclosure of the vehicle's history is made as defined under section 6 of the FTA. There is no expectation of "perfection" as suggested by the Supplier but there is an important onus on the Supplier to disclose vehicle history to the consumer. The Supplier has received information from the auction at the time of purchase, the auction provides a history report with every sale and the MFA if properly completed under the Suppliers supervision.
9. It is a business decision by the Supplier when hiring the services of a qualified technician to complete the mechanical fitness assessment that he obtains accurate reports. The Supplier has indicated that he has encountered a similar problem with a date in the past with regard to the completion of the MFA and had it corrected by the technician. The Supplier has indicated that the technician [REDACTED] "consistently made mistakes" when completing his work. If the technician does not complete his work properly, then the Supplier needs to follow up and is responsible for a properly completed MFA. The consumer should not be the one responsible for the technician not doing his work properly. The MFA is a mandatory document required by all AMVIC licensed businesses when selling a used car. In the Supplier's response he refers to [REDACTED] being aware of an earlier mistake being made by the technician. That is all the more reason for the Supplier to be diligent in ensuring the MFA is completed thoroughly.

Action

In accordance with section 158.1(a) of the FTA and based on the above facts, I am requiring 1366675 Alberta Ltd. operating as Easy Motors pay an administrative penalty of **\$10,000.00**. This is based on my decision that 1366675 Alberta Ltd. operating as Easy Motors clearly contravened sections 6(3)(a), 6(4)(a), 6(4)(b), 6(4)(h) and 132 of the FTA, section 9 of the ABR and section 15.1 of the VIR.

In deciding the appropriate penalty, the principles of *R v Cotton Felts Ltd.*, (1982), 2 C.C.C (3d) 287 (Ont. C.A.) were applied. The following information was taken into consideration:

1. The representations made by AMVIC Investigators, [REDACTED] (Sr. Manager of Investigations), and [REDACTED] (Investigator) were taken into consideration.
2. The Supplier had an opportunity to mitigate this situation but has chosen not to do so.
3. The complainant [REDACTED] has had loss of the use of the vehicle due to it being deemed unsafe by Alberta Transportation and complainant [REDACTED] has a vehicle that does not run properly (engine).

4. The significance of the breach of the FTA, TSA and related regulations.
5. The Supplier had entered into a previous undertaking for similar circumstances where consumers were not given the appropriate disclosure including the MFA. A copy of this undertaking is attached to this decision.

The amount of the 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 is to be made payable 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
103 Legislature Building
10800 - 97 Avenue NW
Edmonton, AB
Canada 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 \$1000.00.

Yours truly,

"Original signed by"

Jolij Bachinski
Director of Fair Trading (as Delegated)

JB/kl
Encl. Undertaking
cc: [REDACTED], Sr. Manager of Investigations, AMVIC