



ALBERTA MOTOR VEHICLE  
INDUSTRY COUNCIL

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

[www.amvic.org](http://www.amvic.org)

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

December 7, 2015

Served Personally  
Administrative Review – 15-11-001



551546 ALBERTA LTD.  
Operating as MOUNTAIN VIEW CHRYSLER DODGE JEEP RAM  
P.O. BOX 4009  
OLDS, AB T4H 1P6

Attention: Joseph Kasawal

Dear Mr. Kasawal:

Re: 551546 Alberta Ltd. (operating as Mountain View Chrysler Dodge Jeep Ram)  
Automotive Business Licence #B206823

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.

**Fact**

Taking into consideration your representation through a written response which has been reviewed by the writer and the information collected by AMVIC, I understand the facts to be as follows:

- A. The Supplier holds an Automotive Business licence and carries on business as an automotive sales business in the Province of Alberta.
- B. As part of AMVIC's industry standards program, the Supplier was provided with notice that an AMVIC inspection would be conducted on August 28, 2015. The results of the inspection were reviewed with the General Manager, Ryan Baum and the Controller, Heather Bennett-Jaffrey. In addition, a findings letter was prepared and emailed to the business on September 5, 2015.
- C. The findings letter found the following concerns with the business:
  1. AMVIC logo or licensed verbiage is missing on the company website and Kijiji ads;
  2. Three expired and one lapsed salesperson show on the AMVIC database as being linked with the business. It was noted that salespeople were engaged in selling while they were not actively licensed with AMVIC.

- D. The AMVIC Industry Standards Coordinator followed up with the business on September 16, 2015 by phone and email confirming the business would immediately rectify the concerns from the inspection. On September 22, 2015, it was noted the concerns had not been rectified, a further telephone message was left for the Controller and the file was escalated to the Sr. Industry Standards Officer for follow-up.
- E. On September 28, 2015, the Sr. Industry Standards Officer contacted the Supplier by email requesting that the concerns outlined as a result of the inspection be resolved. As of October 20, 2015, the Supplier has failed to resolve the concerns or contact AMVIC.

## **Legislation**

### **Automotive Business Regulation**

#### **Definitions**

##### **Section 1**

- (j) "salesperson" means a person who is authorized by an automotive sales licensee, automotive leasing licensee or automotive consignment licensee to solicit, negotiate or conclude on the licensee's behalf an agreement to buy, sell, lease, exchange or consign a vehicle;

#### **Advertising**

##### **Section 11**

- (2) A business operator must ensure that every advertisement for an automotive business that promotes the use or purchase of goods or services
  - (l) includes in the advertised price for any vehicle the total cost of the vehicle, including, but not limited to, all fees and charges such as the cost of accessories, optional equipment physically attached to the vehicle, transportation charges and any applicable taxes or administration fees, but not including the GST or costs and charges associated with financing, and

#### **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.

### **Fair Trading Act**

#### **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 the Supplier fail to comply with the provisions of the Fair Trading Act and the Automotive Business Regulation?**

- 1 AMVIC has been very diligent with the industry in requesting full compliance in automotive advertising. Information pertaining to advertising is contained in the AMVIC newsletter, AMVIC bulletins, and on the AMVIC website.
- 2 The Supplier has been made aware of the advertising concerns. However, as of September 28, 2015, the business continued to disregard the legislation and had failed to bring their advertising into compliance. In a recent decision of the Supreme Court of British Columbia, the following comment was made by Justice Skolrod\*:

*"In my view it is incumbent upon a party that operates within a regulated industry to develop at least a basic understanding of the regulatory regime, including obligations under the regime, as well as the obligations, and the authority, of the regulator."*

- 3 The Supplier has also been made aware of the fact that they have unregistered salespeople acting on their behalf. Notwithstanding this awareness, the Supplier has not taken any steps to ensure their salespeople are properly registered with AMVIC. The Automotive Business Regulation clearly defines a salesperson and the requirement of that salesperson to be registered before acting on behalf of the business.

#### **Action**

In accordance with section 158.1(a) of the FTA and based on the above facts, I am requiring 551546 Alberta Ltd. (operating as Mountain View Chrysler Dodge Jeep Ram) pay an administrative penalty. This is based on my opinion that 551546 Alberta Ltd. contravened section 11 and 16 of the Automotive Business Regulation.

Taking into consideration all of the representations made by [REDACTED] AMVIC Sr. Industry Standards Officer, [REDACTED] AMVIC Industry Standards Officer and [REDACTED] AMVIC Industry Standards Coordinator and reviewing the documentation received from Ryan Christopher BAUM, the administrative penalty amount is \$1,000.00. The amount takes into consideration the written response of the Supplier.

**The amount of this administrative penalty is \$1,000.00**

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  
513G 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 \$500.00.

Yours truly,

"original signed by"

John Bachinski  
Director of Fair Trading (as Delegated)

JB/kl

cc: [REDACTED] Sr. Industry Standards Officer, AMVIC

\*Windmill Auto Sales & Detailing Ltd. v. Registrar of Motor Dealers, 2014 BCSC 903