

IN THE MATTER OF AN APPEAL BY

KULWINDER SINGH

TO SECTION 127(c) OF THE *FAIR TRADING ACT*,
BEING CHAPTER F-2 OF THE REVISED STATUTES OF ALBERTA, 2000

AND

IN THE MATTER OF THE DECISION BY
THE ALBERTA MOTOR VEHICLE INDUSTRY COUNCIL TO REFUSE THE
REGISTRATION OF THE APPELLANT AS AN AUTOMOTIVE SALESPERSON UNDER
THE *FAIR TRADING ACT* AND *AUTOMOTIVE BUSINESS REGULATION* ON JUNE 15,
2017

REASONS FOR DECISION

Panel Chair: Peter Lokstadt
Members: Bruce Kirkland
Gordon Scott

Appearances: Paula Hale, legal counsel (Shores Jardine LLP) for the Respondent; and
Stephanie P [REDACTED], Manager of Licensing and Consumer Services
(AMVIC) for the Respondent

Appeal Heard: September 12th, 2017
CAPILANO CENTRE, 9945 – 50th Street, Edmonton, Alberta
Main Floor Boardroom

Introduction

1. This is an appeal pursuant to section 22 of the *Automotive Business Regulation*, AR 192/99 from a decision of the Director of Fair Trading (as delegated) to refuse the registration of Kulwinder Singh as a provincial automotive salesperson under section 127 and section 104 of the *Fair Trading Act*.

Jurisdiction

2. The *Fair Trading Act* and the *Automotive Business Regulation* regulate, among other things, automotive business licences and salesperson registrations in Alberta.
3. Under section 104 of the *Fair Trading Act*, no person may engage in a designated business unless that person holds a licence under the *Fair Trading Act* that authorizes

them to engage in that business. The automotive sales business is a designated business.

4. Pursuant to section 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.
5. The Director's jurisdiction with respect to automotive business licences and salesperson registrations is found at section 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(3),
 - (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,
 - (v.1) fails to comply with any other legislation that may be applicable,
 - (vi) 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,
 - (vii) is convicted of an offence referred to in section 125 or is serving a sentence imposed under a conviction, or
 - (viii) fails to pay, in accordance with the notice of administrative penalty and the regulations, an administrative penalty imposed under this Act;
- (c) in the opinion of the Director, it is in the public interest to do so.

6. 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.

7. Section 127 of the *Fair Trading Act* applies to both automotive business licences and salesperson registrations.
8. 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.
9. 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.
10. 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 applicant to appeal a decision of AMVIC by delivering a written Notice of Appeal to the CEO of AMVIC not later than thirty (30) days after AMVIC issues notice of its decision.
11. This is an appeal pursuant to section 22 of the *Automotive Business Regulation*.
12. Pursuant to section 3(ii)(o) of the Appeal Policy:

The Panel shall determine if the decision by the Director of Fair Trading (as delegated) 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.

Evidence before the Appeal Panel

13. Mr. Singh failed to attend the hearing.
14. AMVIC was represented by Ms. Paula Hale, AMVIC's legal counsel and Ms. Stephanie P [REDACTED], AMVIC Manager of Licensing.
15. The Appeal Panel was advised that at approximately 9:37 a.m., AMVIC attempted to contact Mr. Singh by telephone at the telephone number provided to AMVIC by Mr. Singh. No one picked up the call and AMVIC was unable to leave a voicemail message as no voicemail messaging system was set up.
16. No other evidence was put before the Appeal Panel.

Appeal Panel Decision

17. The Appeal Panel upholds the decision of the Director to refuse the application of Kulwinder Singh for an automotive salesperson registration under section 127(c) and section 104 of the *Fair Trading Act*.
18. Absent additional evidence and due to the Appellant's failure to attend, the Appeal Panel finds the decision of the Director to be 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.
19. The Appeal Panel is satisfied that Mr. Singh was given an exhaustive and fair opportunity to be heard. All evidence before the Appeal Panel has been reviewed and the Appeal Panel is satisfied that the decision to uphold the Director's refusal of Mr. Singh's application for an automotive salesperson registration was in the best interest of the public at large and of the industry.

Issued and Dated:

"original signed by"

Peter Lokstadt
Chair – AMVIC Salesperson Appeal Committee

SEP-28-2017

Date