

IN THE MATTER OF AN APPEAL BY

CLINTON DILLMAN

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 NOVEMBER 17, 2017

REASONS FOR DECISION

Panel Chair: Ayodola Dahunsi
Members: Bruce Kirkland
(the "Appeal Panel")

Legal Counsel
for Hearing Panel: Bryanna J. White (Emery Jamieson LLP)

Appearances: Paula Hale, Legal Counsel (Shores Jardine LLP) for the Respondent; and
Katie L [REDACTED], Legal Assistant (AMVIC) for the Respondent

Appeal Heard: January 17th, 2018
CAPILANO CENTRE, 9945 – 50th Street, Edmonton, Alberta
Main Floor Boardroom

Introduction

1. This is an appeal pursuant to s. 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 Clinton Dillman as a provincial automotive salesperson under s. 127 and s. 104 of the *Fair Trading Act* (the "Appeal").

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 Appellant to appeal a decision of AMVIC by delivering a written Notice of Appeal to the Chief Executive Officer of AMVIC within 30 days after AMVIC issues notice of its decision to the Appellant.
11. 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 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.

PRELIMINARY MATTERS

COMPOSITION OF THE APPEAL PANEL

12. The Appeal Panel originally consisted of three members. However, one member became unavailable to attend as a result of unforeseen circumstances.
13. Pursuant to section 3(ii)(h) of the Appeal Policy:
- If one or more of panel members dies, resigns or is removed under the Appeal Policy or the Bylaws of AMVIC, or in any other manner, the remaining panel members may select a successor from the roster or continue with a panel of two (2).
14. The Appeal Panel elected to continue the Appeal with a panel of two (2) members per the Appeal Policy.

NOTICE OF THE APPEAL

15. The Appeal was originally scheduled to be heard at 9:30 a.m. on January 17, 2018. Approximately twelve days prior to the Appeal, the time of the hearing was changed to 1:30 p.m. on January 17, 2018.

Evidence before the Appeal Panel

16. AMVIC was represented by Ms. Katie L [REDACTED], AMVIC Legal Assistant.
17. AMVIC's legal counsel, Ms. Paula Hale, was present.
18. The evidence provided by Ms. Katie L [REDACTED], was that:
 - Ms. L [REDACTED] job is to schedule appeals, contact parties and organize documents for appeals.
 - The Appeal was originally scheduled to be heard at 9:30 a.m. on Wednesday, January 17, 2018.
 - Mr. Dillman was notified in writing of the date of the Appeal by Ms. L [REDACTED] at the address Mr. Dillman provided when he applied to AMVIC.
 - A scheduling conflict arose which necessitated changing the time of the Appeal.
 - When Ms. L [REDACTED] was made aware of the scheduling conflict, she attempted to contact Mr. Dillman.
 - On January 5, 2018, Ms. L [REDACTED] telephoned Mr. Dillman and left a message. Ms. L [REDACTED] remarked that the voicemail messaging system on which she left the message had Mr. Dillman's name and voice and was not automated. She was satisfied that she was leaving a message on Mr. Dillman's telephone.
 - On January 5, 2018, Ms. L [REDACTED] sent an email to Mr. Dillman at the email address Mr. Dillman had previously used to correspond with AMVIC. That email did not bounce back.
 - On or about January 5 or 8, 2018, Ms. L [REDACTED] telephoned Mr. Dillman's employer and asked to speak with Mr. Dillman. Ms. L [REDACTED] was advised that Mr. Dillman was no longer employed by them.
 - On January 8, 2018, Ms. L [REDACTED] again telephoned Mr. Dillman and left a message.
 - On January 11, 2018, Ms. L [REDACTED] sent an email to Mr. Dillman enclosing a Formal Letter which advised of the change of time of the Appeal. The email did not bounce back.
 - The morning of January 17, 2018, Ms. L [REDACTED] sat in the Main Floor Boardroom of the Capilano Centre – the scheduled location of the Appeal – from 9:25 a.m. to 10:00 a.m. Mr. Dillman did not attend the Main Floor Boardroom during these times.

Appeal Panel Decision

19. Based on the evidence provided by Ms. L [REDACTED], the Appeal Panel is satisfied that Mr. Dillman was provided with proper and sufficient notice of the Appeal and of the change of time of the Appeal.
20. Based on the evidence provided by Ms. L [REDACTED], the Appeal Panel is satisfied that Mr. Dillman did not attend the Appeal at the previously scheduled time.

DECISION OF THE DIRECTOR

21. Having been satisfied that Mr. Dillman was provided with proper and sufficient notice of the Appeal, the Appeal proceeded in the absence of Mr. Dillman.

Evidence before the Appeal Panel

22. AMVIC's legal counsel, Ms. Paula Hale, was present.

Katie L [REDACTED]

23. AMVIC was represented by Ms. Katie L [REDACTED], AMVIC Legal Assistant. Ms. L [REDACTED] advised the Appeal Panel that she had previously been employed with AMVIC as a licensing advisor. Ms. L [REDACTED] provided the following additional evidence in direct examination:
 - AMVIC receives approximately 3200 salesperson applications annually.
 - The application for salesperson registration is filled-out online. The application asks a series of questions pertaining to the applicant's background in the industry, their personal background and their criminal record, if any.
 - When applications are received, AMVIC will run both Canada-wide and Alberta-wide criminal record checks. AMVIC will also run internal checks and perform google searches. Applicants are advised that AMVIC will run criminal record checks. Applicants are advised that there are consequences associated with providing false information on the application.
 - Having criminal convictions or charges does not automatically eliminate an individual from obtaining a salesperson registration.
 - When reviewing the criminal record of an applicant, the following will be considered: how recently the convictions were entered or charges laid, the number of convictions or charges, and the types of convictions and charges.
 - Ms. L [REDACTED] reviewed Mr. Dillman's file. Based on AMVIC's criminal record searches, the information provided by Mr. Dillman on his application was not accurate.

- Though Mr. Dillman admitted that he had been charged with numerous offences, he minimized his role in his charges and convictions.
 - Mr. Dillman's application implied that he was wrongfully convicted and was appealing his convictions. However, Mr. Dillman admitted to the Director that he had either pled guilty to various convictions or had missed the applicable appeal period.
 - Mr. Dillman's convictions were:
 - Fairly recent,
 - Of a serious nature, and
 - Significant in number over a short period of time.
 - Finally, during the review before the Director, Mr. Dillman admitted to curbing motor vehicles in violation of the *Fair Trading Act*.
24. Ms. L [REDACTED] evidence was supported by Exhibit 1, a chart prepared by AMVIC's legal counsel which summarized Mr. Dillman's charges and convictions.

AMVIC's Submissions

25. AMVIC submitted that the Director's decision was reasonable for the following reasons:
- Mr. Dillman failed to provide proper and full disclosure of his criminal record. Mr. Dillman minimized his charges and convictions which demonstrated that he had not taken responsibility for his actions; and
 - Mr. Dillman's charges and convictions are recent and of a serious nature of particular concern in the automotive industry and strike at the foundation of the transaction between a salesperson and a customer.
26. AMVIC further noted that Mr. Dillman failed to attend the hearing or advise AMVIC that he would not be attending the hearing. It was submitted that such actions suggest a disregard for AMVIC as a regulator.
27. AMVIC submitted that the *Fair Trading Act* exists to ensure consumer protection. Persons working under consumer protection legislation must be fair, honest, and demonstrate integrity. Acts which show a disregard for rules and a willingness to take advantage of others are the actions of an individual who would be inappropriate in the role of salesperson.
28. AMVIC's position was that the decision of the Director was reasonable and should be upheld.

APPEAL PANEL DECISION

29. Upon hearing the evidence and arguments put forward by the respondent, AMVIC; and upon the appellant, Clinton Dillman, not appearing; the Appeal Panel has decided to

uphold the decision of the Director to refuse the application of Clinton Dillman for an automotive salesperson registration under section 127(c) and section 104 of the *Fair Trading Act*.

30. The Appeal Panel has reached its decision for the following reasons:

- It is in the public interest not to issue Mr. Dillman a salesperson registration at this time;
- The role of a salesperson necessarily requires the handling of funds and credit cards belonging to customers, and Mr. Dillman's charges and convictions strike at the heart of the transaction between a salesperson and a customer;
- There was no evidence before the Appeal Panel that Mr. Dillman is on a path of rehabilitation and that there is no risk to the public; and
- The Director's decision was reasonable and 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.

31. The Appeal Panel is satisfied that Mr. Dillman 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. Dillman's application for an automotive salesperson registration is in the best interest of the public at large and of the industry.

Issued and Dated:

"original signed by"

Ayodola Dahunsi
Chair – AMVIC Salesperson Appeal Committee

Date