



ALBERTA MOTOR VEHICLE
INDUSTRY COUNCIL

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June 4, 2018

Served Personally
Administrative Review – 18-04-017

Administrative Penalty

WOODRIDGE FORD LINCOLN LTD.
11580 24 STREET SE
CALGARY, AB T2Z 3K1

Attention: G. Wood

Dear Mr. Wood:

Re: Woodridge Ford Lincoln Ltd. Automotive Business Licence #B170863

As the Director of Fair Trading (as delegated), I am writing to you pursuant to section 158.1(1) of the *Consumer Protection Act* ("CPA") to provide you with written notice of the administrative penalty issued under that section.

Facts

The information that I have taken into consideration for the purpose of my preliminary assessment is set out in an Alberta Motor Vehicle Industry Council ("AMVIC" "the regulator") Application Report (the "Application Report") prepared by AMVIC's Investigation department. A copy of the Application Report and supporting documentation is attached as **Schedule "1"**. The Supplier provided written representations on May 22, 2018, in response to the Proposed Administrative Penalty attached as **Schedule "4"**. Based on all the evidence, I find the facts in this matter to be as follows:

Licencee Status

Woodridge Ford Lincoln Ltd. (the "Supplier") holds an Automotive Business licence and carries on business as an automotive sales business in the Province of Alberta.

History

- A. A salesperson audit had been completed on Woodridge Ford Lincoln Ltd. in January 2007, which initiated an investigation because the results showed that there were two expired salespeople working at the dealership during the audit.
- B. On May 3, 2016, the Industry Standards Department conducted a routine inspection on the Supplier (Attached as **Schedule "2"**). The Industry Standard Officer (ISO) identified that several

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of the salespeople employed by the Supplier were selling automotive vehicles with expired salesperson registrations. At this time, the business was advised to monitor the database and to ensure all of their salespeople were current and registered with AMVIC before engaging in any further sales transactions.

- C. Based on the findings of the May 3, 2016 inspection there were five salespeople that continued to sell vehicles when their salesperson registrations were expired. According to the Suppliers records, there are two bills of sale dated April 4, 2016, which indicate James MacDonald as the salesperson. Mr. MacDonald's salesperson registration expired on August 31, 2015 and was not reinstated until May 3, 2016.
- D. A follow – up inspection was completed on the Supplier on September 14, 2017 (the Findings Letter is attached as **Schedule "3"**), at which time the ISO noticed there was a salesperson linked and designated to act on behalf of the Supplier, however was no longer employed by Woodridge Ford Lincoln Ltd. The Supplier was told again to monitor the database and to ensure all of their salespeople were current and registered with AMVIC before engaging in any further sales transactions.

Summary of Investigation

- E. AMVIC received Brock Dennison's application for a Provincial Automotive Salesperson Registration on February 28, 2018. After reviewing Mr. Dennison's application the Licensing Department had concerns that Mr. Dennison was actively involved in selling automotive vehicles prior to his Provincial Automotive Salesperson Registration being processed.
- F. Mr. Dennison's social media posts suggest that he is a sales consultant at Woodridge Ford Lincoln Ltd. and has been selling automotive vehicles on behalf of Woodridge Ford Lincoln Ltd. since March 2, 2018. Mr. Dennison applied for a salesperson registration, however, his application has not been fully processed and accordingly Mr. Dennison does not currently have an AMVIC salesperson registration.
- G. On April 3, 2018, Investigator Nina. M. called Woodridge Ford Lincoln Ltd. and spoke to Brock Dennison. The Investigator posed as a potential client interested in purchasing a vehicle. During her discussion with Mr. Dennison they discussed a couple of vehicles that were advertised on the Woodridge Ford Lincoln Ltd. website, potential interest rates, current sale promotions, and they discussed meeting to view these vehicles later that evening at the dealership. During their telephone conversation Brock also provided the Investigator with his direct phone number, which matches the phone number he provided AMVIC with on his application for a salesperson registration application.
- H. Following the Investigator conversation with Mr. Dennison on April 3, 2018, she attended Woodridge Ford Lincoln Ltd. and spoke with the General Manager Travis Eade. The Investigator advised Mr. Eade that Mr. Dennison was not a registered salesperson with AMVIC at which time Mr. Eade called his assistant who advised she thought he was registered as he had passed the salesperson course. The Investigator advised Mr. Eade and his assistant that unless an applicant receives their AMVIC salesperson certificate via email they are not registered to sell vehicles. According to section 16(1) of the ABR,

“ a salesperson of an automotive sales business operator must be registered for automotive sales before acting on behalf of the business operator”

If the salesperson is not registered with the regulator the salesperson is contravening section 16(1) of the Automotive Business Regulation (“ABR”) and the supplier is liable for the actions of said salesperson under section 20.1 of the ABR and section 166 of the CPA. They were advised that Mr. Dennison has not received his salesperson certificate because his salesperson application is still being processed by AMVIC.

- I. After the Investigator spoke with Mr. Eade, she spoke with Mr. Dennison, at which time he advised her that he believed he was registered. Brock stated, *“He completed the course and thought it was odd that he hadn’t received his registration certificate.”* He also stated, *“He emailed the Licensing Department that same morning wondering where his registration certificate was.”* Mr. Dennison was advised that he needed to stop all sales activity and advertising on behalf of Woodridge Ford Lincoln Ltd. until he receives his salesperson registration certificate from AMVIC.
- J. On May 22, 2018, the Supplier provided AMVIC with a copy of their written representations (Attached as **Schedule “4”**)

Legislation

Automotive Business Regulation (“ABR”)

Definitions

Section 1(1)

In this Regulation,

- (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;

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.

Acting on behalf of a business operator

Section 20.1

No business operator may allow a salesperson to act on the business operator’s behalf unless

- (a) the salesperson is registered for the class of licence held by the business operator

Consumer Protection Act ("CPA")

Registration

Section 140

- (2) When the Minister specifies in the regulations under subsection (3) that a person who falls within a specified class is required to be registered before acting on behalf of a licensee,
- (a) a person who falls within that class may not act on behalf of the licensee unless the person is registered, and
 - (b) the licensee may not authorize a person who falls within that class to act on the licensee's behalf unless the person is registered.

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.

Vicarious liability

Section 166

For the purposes of this Act, an act or omission by an employee or agent of a person is deemed also to be an act or omission of the person if the act or omission occurred

- (a) in the course of the employee's employment with the person, or
- (b) in the course of the agent's exercising the powers or performing the duties on behalf of the person under their agency relationship.

Analysis – Did the Supplier fail to comply with the provisions of the *Consumer Protection Act* and the *Automotive Business Regulation*?

According to AMVIC inspection records, a routine salesperson audit was conducted in January of 2007. As a result of this investigation, the Inspector identified that there were two salespeople working without valid salesperson registrations.

On May 3, 2016 an inspection was conducted by an ISO and a finding letter was sent to the Supplier which outlined that there were unregistered salespeople acting on their behalf and were advised it was a good business practice to monitor the database to ensure all salespersons were current and registered before allowing them to engage in any automotive sales. The ABR and CPA clearly defines a salesperson and the requirement of that salesperson to be registered before acting on behalf of the business.

The onus lies with any business to do their due diligence to ensure that they are complying with the legislation. The Supplier had been given the opportunity to implement changes to ensure business practices were brought into compliance with the legislation. However, based on the evidence provided by the Investigator the Supplier continues to operate with unregistered salespeople contravening section 16(1), 20.1 of the ABR and 140(2) of the CPA.

AMVIC does not see having unregistered salespeople acting on behalf of licensees as a "minor incident", it is a violation of section 16 and 20.1 of the ABR. Woodridge Ford Lincoln Ltd. was given the opportunity to ensure compliance through multiple inspections and were advised of the importance of having their designated agent registered and their roster updated.

There exists an onus on the Supplier to do their due diligence and ensure they are complying with the law. As stated in the Supreme Court of British Columbia in *Windmill Auto Sales & Detailing Ltd. v. Registrar of Motor Dealers*, 2014 BCSC 903 addressed the issue of the onus and responsibility the Supplier has when operating within regulated industry. The court at paragraph 59 stated:

"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 its obligations under the regime, as well as the obligations, and the authority, of the regulator."

The amount of the administrative penalty must be sufficient in that the Supplier and other Suppliers do not view the amount of the penalty as a cost of doing business that is preferable to following the law.

Action

In accordance with section 158.1(a) of the CPA and based on the above facts, I am requiring Woodridge Ford Lincoln Ltd. pay an administrative penalty. This is based on my decision that Woodridge Ford Lincoln Ltd. contravened section 16 and 20.1 of the ABR and section 140(2) of the CPA.

Taking into consideration the representations made by AMVIC's investigation department and the representations made by the Supplier, the administrative penalty being imposed is **\$4,000.00**. This penalty amount takes into consideration the factors outlined in section 2 of the *Administrative Penalties (Fair Trading Act) Regulation*, AR 135, 2013. In particular, the Director took into account:

1. The seriousness of the contravention or failure to comply;
2. Whether or not the person who receives the notice of administrative penalty has a history of non-compliance;
3. The degree of wilfulness or negligence in the contravention or failure to comply;
4. The maximum penalty under section 158.1(3) of the CPA of \$100,000.

The amount of the administrative penalty is \$4,000.00.

Pursuant to section 3 of the *Administrative Penalties (Fair Trading Act) Regulation*, you are required to submit payment within thirty (30) days of the date of service of this notice. Failure to pay the administrative penalty will result in a review of the licence status. Payment may be made payable to the "Government of Alberta" and sent to AMVIC at:

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

If payment has not been received in this time period, the Notice may be filed in the Court of Queen's Bench and enforced as a judgement of that Court pursuant to section 158.4 of the *Consumer Protection Act* and further disciplinary action will be considered.

Section 179 of the CPA (formerly the *Fair Trading Act*) 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 CPA (formerly 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"

Gerald Gervais, Registrar
Director of Fair Trading (as Delegated)

/cz

Cc: Derek B-S, Senior Manager of Investigations, AMVIC