

IN THE MATTER OF AN APPEAL BY

JESSE DAMEN

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 CANCEL THE REGISTRATION  
OF THE APPELLANT AS AN AUTOMOTIVE SALESPERSON UNDER THE *FAIR TRADING  
ACT* AND *AUTOMOTIVE BUSINESS REGULATION* ON NOVEMBER 21, 2017

**REASONS FOR DECISION**

Panel Chair: Ayodola Dahunsi  
Members: Tony Plett  
Mike Kwasek

Appearances: Paula Hale, legal counsel (Shores Jardine LLP) for the Respondent; and  
Ms. Meghan D [REDACTED] AMVIC Investigator, for the Respondent

Appeal Heard: June 21, 2018  
CAPILANO CENTRE, 9945 – 50<sup>th</sup> Street, Edmonton, Alberta  
Main Floor Boardroom

**Introduction**

1. Since the decision of the Director, issued on November 21, 2017, the *Fair Trading Act* has been replaced by the *Consumer Protection Act* (being chapter c-26.3 of the Revised Statutes of Alberta, 2000).
2. The changes to the legislation do not impact the issues in this appeal.
3. The *Fair Trading Act* will be referred to throughout this decision.
4. 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 cancel the registration of Jesse Damen as a provincial automotive salesperson under section 127 and section 104 of the *Fair Trading Act*.

**Preliminary Matters**

5. Mr. Damen was not in attendance at the Appeal.
6. Mr. Damen had previously requested adjournments of the Appeal on two (2) separate occasions. Such requests were granted.

7. The Appeal Panel was advised that Mr. Damen had corresponded with AMVIC and advised that he would not be attending the hearing and would not be pursuing his appeal.
8. The Appeal Panel determined that Mr. Damen was given proper notice of the hearing and is satisfied that Mr. Damen was given the opportunity to be heard.
9. The Appeal proceeded in Mr. Damen's absence.

#### **Jurisdiction**

10. The *Fair Trading Act* and the *Automotive Business Regulation* regulate, among other things, automotive business licences and salesperson registrations in Alberta.
11. 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.
12. 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.
13. 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.
- 14. 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.
- 15. Section 127 of the *Fair Trading Act* applies to both automotive business licences and salesperson registrations.
- 16. 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.
- 17. 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.
- 18. 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.
- 19. 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.
- 20. Particularly relevant to this Appeal are subsections 6(3) and 6(4) of the *Fair Trading Act* which state:
  - 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;
    - (b) to enter into a consumer transaction if the supplier knows or ought to know that there is no reasonable probability that the consumer is able to pay the full price for the goods or services;
    - (c) to include in a consumer transaction terms or conditions that are harsh, oppressive or excessively one-sided;

- (d) to make a representation that a consumer transaction involves or does not involve rights, remedies or obligations that is different from the fact.
- (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;
  - ...
  - (k) a supplier's representation that the supplier can supply goods or services if the supplier cannot;
21. Also relevant is section 12 of the *Automotive Business Regulation* which states:
- 12 Every business operator must comply with section 6 of the Act and in addition must
- (a) not make any representations, statements or claims that are not true or are likely to mislead a consumer,
  - (b) use only timely, accurate, verifiable and truthful comparisons that can be supported with established and reliable data,
  - (c) not abuse the trust of a consumer or exploit any fear or lack of experience or knowledge of a consumer,
  - (d) not use undue, excessive or unreasonable pressure on a consumer to complete a transaction,
  - (e) not make any verbal representations regarding contracts, rights or obligations that are not contained in written contracts,
  - (f) not make any representation that savings, price benefits or advantages exist if they do not exist or if there is no evidence to substantiate the representation,
  - (g) not use threatening, intimidating, abusive or coercive language in discussions with a consumer,
  - (h) not charge a price for goods or services that is more than 10%, to a maximum of \$100, higher than the estimate given for those goods or services unless
    - (i) the consumer has expressly consented to the higher price before the goods or services are supplied, or
    - (ii) if the consumer requires additional goods or services, the consumer and the supplier agree to amend the estimate in a consumer agreement,
  - (i) not make any representation to a consumer that the business has the ability to install equipment or to perform a particular repair or service unless the business has the equipment, tools and expertise necessary to complete the installation, repair or service,
  - (j) not subcontract repair work without the knowledge and prior consent of the consumer,



- (k) when rebuilding or restoring a vehicle, do so in such a manner that it conforms to or exceeds the original manufacturer's established standards or specifications and allowable tolerances for the particular model and year unless the consumer has consented in writing to a specific different standard before the rebuilding or restoration is done,
- (l) not substitute used, rebuilt, salvaged or straightened parts for new replacement parts without the consumer's knowledge and prior consent,
- (m) provide the consumer in writing with information regarding the parts installed, including whether they are original equipment manufacturer's parts or from another source, and whether they are new, used or reconditioned,
- (n) offer to return all parts removed from the vehicle in the course of work or repairs to the consumer, and return them unless advised by the consumer that the consumer does not require the parts to be returned, and
- (o) comply with any legislation that may apply to the selling, leasing, consigning, repairing, installing, recycling or dismantling of vehicles.

#### **Evidence before the Appeal Panel**

- 22. Counsel for AMVIC reviewed the authority of the Appeal Panel and the relevant legislation as outlined in the previous section.
- 23. The events giving rise to the Director's decision to cancel Mr. Damen's salesperson registration were as follows:
  - Mr. Damen was issued a salesperson registration by AMVIC in November of 2015;
  - Mr. Damen was a financial director at ProCredit; and
  - AMVIC received four (4) complaints in 2017, from different consumers (the "Complainants"), regarding Mr. Damen's conduct.
- 24. Counsel for AMVIC called Ms. D [REDACTED] as a witness. Ms. D [REDACTED] noted:
  - She is an investigator with AMVIC and has held that role for [REDACTED] years;
  - She was previously employed as an investigator for [REDACTED];
  - When a complaint is received by AMVIC, it can be turned into an investigation file;
  - She is assigned files, she does not choose them herself;
  - Complaints do not always lead to disciplinary proceedings;
  - She received a number of files with complaints against Mr. Damen;

- Consumers alleged that the transactions they entered into had been misrepresented by Mr. Damen. Mr. Damen had advised them that he would put them into a rental vehicle with no payments to improve their credit. After three (or six) months, they would be able to purchase a more affordable vehicle;
  - The number of complaints and the similarity of complaints was compelling;
  - As a result of the investigation, which included interviewing the consumers who made the complaints, Ms. D [REDACTED] was of the opinion that Mr. Damen was misleading consumers;
  - As a result, she recommended that Mr. Damen's salesperson registration be cancelled.
25. Ms. D [REDACTED] confirmed that she did not cancel the registration. She made a recommendation which was approved by her supervisor and which ultimately led to an administrative review.
26. Ms. D [REDACTED] and Mr. Damen were both present at the Administrative Review.
27. Ms. D [REDACTED] elaborated further with respect to each complaint. Ms. D [REDACTED] report and efforts were detailed in a package of documents marked as Exhibit 1.

#### First Complaint

28. Ms. D [REDACTED] discussed the circumstances surrounding the first complainant, Mr. [REDACTED]
- Mr. [REDACTED] advertised his vehicle for sale on Kijiji for \$60,000 and was contacted by Sarah Moore – a ProCredit employee;
  - Mr. [REDACTED] was advised that ProCredit could pay him close to the \$60,000 he was asking for;
  - Mr. [REDACTED] was advised by Mr. Damen that the vehicle could be traded-in for \$58,000;
  - Mr. Damen and Mr. [REDACTED] discussed the purchase of another vehicle, a 2017 GMC Sierra 1500. Mr. Damen advised that the price of the new vehicle was \$60,000;
  - The vehicle was delivered to Mr. [REDACTED] in Whitecourt and he did not review the contract before signing it;
  - Shortly after signing the document, Mr. [REDACTED] noted that the cost for the vehicle he had purchased was \$71,149 and he had only received \$39,999 for his trade-in; and
  - Mr. Damen was uncommunicative when Mr. [REDACTED] tried to discuss the matter further.

### Second Complaint

29. The Second Complaint was made by Mr. [REDACTED] Mr. [REDACTED] statement indicated that:
- He had recently purchased a new truck but was unsatisfied so he placed it for sale on Kijiji;
  - He was contacted by Mr. Damen and another ProCredit salesman;
  - Mr. [REDACTED] was told that he could be put into a "rental" truck that would be put in his name and which would assist him in building credit while he waited for his truck to be sold;
  - He was advised that once his credit was built up, he would be able to purchase a cheaper older truck at an interest rate of 3%; and
  - He was promised that if his truck did not sell, ProCredit would take both trucks and there would be no negative equity on the "rental" truck.
30. A series of text messages exchanged between Mr. Damen and Mr. [REDACTED] were included in Exhibit 1. These text messages provided support for Mr. [REDACTED] version of events.

### Third Complaint

31. The Third Complaint was made by Mr. [REDACTED] Mr. [REDACTED] was referred to Mr. Damen and ProCredit by his brother, [REDACTED] Mr. [REDACTED] described events similar to those experienced by his brother:
- He was advised that he could get a nice truck with low interest rates;
  - He was advised he would be given a "rental" truck which would allow him to boost his credit;
  - He was advised that after six (6) months the "rental" truck would be taken back with no fees and he would be put into a truck that he wanted;
  - When he wished to return the "rental" truck, he had difficulty getting in contact with any salespeople at ProCredit and was eventually told that ProCredit would not take the truck back; and
  - He did not receive the deal he thought he was offered and is now stuck with a vehicle that is unaffordable.
32. No text messages between Mr. [REDACTED] and Mr. Damen were provided in Exhibit 1.
33. Both Mr. [REDACTED] believed and asserted that they had been offered money by ProCredit to not report their experience with Mr. Damen and other ProCredit staff to AMVIC.



34. Ms. D. [REDACTED] advised that based on her review, this was not entirely accurate. It was apparent that ProCredit had offered some money "in order to make it right". The evidence was not clear that ProCredit had offered money in exchange for the Mr. [REDACTED] not filing complaints with AMVIC.

#### Fourth Complaint

35. The Fourth Complaint was made by Ms. [REDACTED]. Ms. [REDACTED] had expressed an interest in attending the Appeal Hearing and providing her evidence in person. However, because Mr. Damen decided not to attend the Appeal Hearing, Ms. [REDACTED] was advised that her attendance was not necessary. Ms. [REDACTED] experience was similar to the other complainants, and during the investigation, she described the situation as follows:

- She was selling a vehicle on Kijiji and was contacted by Mr. Damen;
- She advised Mr. Damen that her monthly car payments were already too high and she needed a vehicle that would have lower monthly payments;
- She specifically advised Mr. Damen of the amount of her monthly car payments;
- Mr. Damen advised her that she would not have to make payments for three (3) months;
- She was advised that after three (3) months, she would be put into a smaller vehicle that she could afford;
- She did not have a choice with respect to the type of "rental" vehicle or the price of the "rental" vehicle;
- She was promised that in all events she would not have to make any payments on the "rental" vehicle and she would walk away in three (3) months without the "rental" vehicle or the associated loan;
- After she completed the transaction, she received poor communication from the employees at ProCredit and eventually was told that ProCredit would not take back the vehicle; and
- ProCredit offered her \$2,000 to sign a release.

36. Text messages exchanged between Ms. [REDACTED] and Mr. Damen were presented to the Appeal Panel in Exhibit 1. These messages support Ms. [REDACTED] account of events. Specifically of note:

- Mr. Damen refused to send the contract over email indicating that it was the bank's requirement that he not do so;
- Mr. Damen refused to provide documentation electronically as being against company policy;
- Mr. Damen advised Ms. [REDACTED] that a full video and pictures had been taken of the "rental" vehicle before she had picked it up and that pre-existing dents and



chips would not impact the value of the trade when Ms. [REDACTED] ultimately traded the "rental" vehicle in; and

- Mr. Damen refused to meet Ms. [REDACTED] in the company of someone else.

37. In addition to the text messages, supporting letters from Ms. [REDACTED] friends were provided to corroborate Ms. [REDACTED] description of events.

Evidence from Mr. Damen

38. As Mr. Damen was not present at the Appeal Hearing, his evidence is limited to a statement he gave to Ms. D [REDACTED] found in Exhibit 1.

39. Mr. Damen's statement describes events as follows:

- ProCredit operated a high-pressure sales environment where a variety of punishments were inflicted on employees who failed to meet expectations;
- He found Mr. [REDACTED] on Kijiji. Mr. [REDACTED] was looking to purchase a diesel truck. After advising Mr. [REDACTED] that his credit was not good enough for him to be approved for the required loan. He advised Mr. [REDACTED] that he could get another auto loan which would help establish his credit. He also advised Mr. [REDACTED] that the bank had offered three (3) months of deferred payments.
- His experience with Mr. [REDACTED] was similar to his experience with Mr. [REDACTED]
- His experience with [REDACTED] was also described in a similar manner. He added that Ms. [REDACTED] boyfriend "was very impressed with [the paperwork] and proceeded to encourage her to sign the legal[ly] binding bank contracts".

40. During the course of her investigation, Ms. D [REDACTED] discovered that it was impossible to build credit within three months, and all finance staff would be aware of this.

41. Mr. Damen was unable to provide satisfactory answers to the complaints and blamed his employer, ProCredit, for his actions.

42. On November 21, 2017, the Director issued a decision to cancel the automotive salesperson registration of Mr. Damen on the basis that:

- Pursuant to section 127(c) of the *Fair Trading Act*, it was the public interest to do so;
- Mr. Damen should have been aware of the expectations under section 12 of the *Automotive Business Regulation* and section 6 of the *Fair Trading Act* and should not have contravened those sections by engaging in misleading and deceptive practices, by making false claims and promises for services he could not provide thereby leaving several consumers without any reasonable benefit due to his unscrupulous actions;

- Mr. Damen was unable to satisfactorily and credibly explain his conduct and left the Director with concerns regarding his ability to comply with the governing legislation;
- AMVIC's mandate is consumer protection and allowing Mr. Damen to maintain his registration would discredit the automotive industry; and
- Mr. Damen's actions harmed unsuspecting and vulnerable consumers and his conduct was unacceptable.

#### AMVIC's Closing Submissions

43. AMVIC acknowledged that the Complainants were not as cautious and diligent as they ought to have been.
44. However, Mr. Damen led the consumers to believe that they would receive benefits from the transactions that they could not possibly receive.
45. Mr. Damen's conduct lacked the honesty and integrity expected of salespeople in the automotive industry.
46. Mr. Damen's conduct was unacceptable and could not be justified.
47. AMVIC also submitted the case of *Patel v W.G. Housing Ltd. (c.o.b. City Core Developments Ltd.)*, [2012] AJ No 1403 (marked as Exhibit 2) for the proposition that the "legislative purposes of the [Fair Trading Act] have been found to be to 'protect unsuspecting consumers from unconscientious suppliers of goods and services'" (para 170).
48. It was in the best interest of the industry, the profession as a whole and consumer protection to cancel Mr. Damen's salesperson registration.

#### **Appeal Panel Decision**

49. The Appeal Panel upholds the decision of the Director to cancel Jesse Damen's automotive salesperson registration under section 127(c) and section 104 of the *Fair Trading Act*.
50. This cancellation is in the public interest.
51. Ms. D [REDACTED] investigation supports the descriptions of events put forward by the Complainants over those put forward by Mr. Damen. The Appeal Panel accepts the investigation record.
52. It is clear on the evidence that Mr. Damen misled multiple consumers into making bargains from which they could derive no reasonable benefit and at the very least, not the benefit they sought.
53. The Complainants are not blameless in this situation. They ought to have exercised more caution and reviewed the contracts they were signing. Nevertheless, it is clear that Mr.



Damen's actions and representations violated the *Fair Trading Act* and *Automotive Business Regulation*.

54. It is noted by the Appeal Panel that when the Complainants asked questions about the transactions, Mr. Damen was persistent, used high-pressure tactics to avoid answering questions and provided misleading information.
55. In making misleading and false statements to consumers who placed their confidence in Mr. Damen, Mr. Damen demonstrated a callous disregard for consumers. Mr. Damen was brought in to the confidence of the Complainants, specifically Ms. [REDACTED] who emphasized her difficult financial situation. Mr. Damen exploited the Complainants' vulnerabilities and lack of knowledge.
56. Mr. Damen's conduct lacked the honesty and integrity expected of a salesperson in the automotive industry.
57. Mr. Damen had the appropriate training and ought to have known his responsibilities under the *Fair Trading Act*. Nevertheless, he failed to act in accordance with the *Fair Trading Act*.
58. Mr. Damen's conduct cannot be excused by any implicit or explicit encouragement provided by any other party. Mr. Damen, as a salesperson, had an obligation to be responsible for his own conduct irrespective of any requirements of his employment.
59. 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.
60. The Appeal Panel is satisfied that Mr. Damen 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 cancellation of Mr. Damen's automotive salesperson registration is in the best interest of the public at large and of the industry.

Issued and Dated:

"original signed by"

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Ayodola Dahunsi  
Chair – AMVIC Salesperson Appeal Committee

\_\_\_\_\_  
July 12, 2018  
Date