



ALBERTA MOTOR VEHICLE  
INDUSTRY COUNCIL

Alberta Motor Vehicle Industry Council  
ALBERTA'S AUTOMOTIVE REGULATOR

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amvic.org

August 29, 2018

Served Personally

Administrative Review – 18-07-015

### Administrative Penalty

VILLAGE MOTORS LTD.  
OPERATING AS VILLAGE HONDA  
7663 – 110 AVENUE NW  
CALGARY AB T3R 1R8

Attention: Peter Finch, Gerry Wood & Barry Jordan

Dear Sir(s):

Re: Village Motors Ltd. operating as Village Honda  
Automotive Business Licence B1016036

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 evidence before me in relation to this matter consists of the material contained in an Application Report prepared by the AMVIC investigations department (the "Application Report") and attached as Schedule "A" The Supplier provided written representations on August 23, 2018, in response to the Proposed Administrative Penalty attached as Schedule "B". Based on all the evidence, I find the facts in this matter to be as follows:

### Licencee Status

Village Motors Ltd. operating as Village Honda (the "Supplier") holds an automotive business licence and carries on business as an automotive sales business in the Province of Alberta.

### Direct communications with the Supplier and its Representatives

1. On May 22, 2015, a routine AMVIC Industry Standards inspection was completed at the business location of the Supplier. The findings of the inspection were discussed with the Supplier and a Findings Letter was completed and sent to the business. The Findings Letter outlined the following concerns:
  - a) Four salespeople were engaging in selling vehicles without being properly AMVIC registered contrary to section 16(1) of the Automotive Business Regulation (ABR).

- b) There were various issues with the completion of and disclosure of the Mechanical Fitness Assessments (MFAs) in the deal jackets breaching sections 15(1) and 16 of the Vehicle Inspection Regulation (VIR).
  - c) The Industry Standards Officer reviewed eight used deals with inconsistency of vehicle history reports, five of the deal jackets did not contain a vehicle history report and one vehicle history provided had damage records but there was no indication these damages were disclosed to the consumer. There is a requirement on the Supplier to keep complete records of each sale transaction pursuant to section 132(1) of the CPA and section 9 of the ABR.
  - d) Four consignment deals were reviewed and it was noted that there was no consignment agreement in place as per section 33 of the ABR for any of the four consignment sales.
2. On September 6, 2016, a follow up AMVIC Industry Standards inspection was completed on the Supplier. The findings of the inspection were discussed with the Supplier and a Findings Letter dated September 9, 2016 was completed and sent to the business. The follow up inspection found:
- a) One salesperson was engaging in vehicle sales but was not properly AMVIC registered contrary to section 16(1) of the ABR.
  - b) Advertisements on the website included fine print which did not reflect the all-in pricing requirements contrary to section 11(2)(l) of the ABR.
  - c) There were various issues with the completion of and disclosure of the MFAs in the deal jackets breaching section 15(1) and 16 of the VIR.
  - d) Four used vehicle deal jackets did not contain any documentation confirming the Supplier's representation of the history of the vehicle to the consumer as required by section 6(4)(h) of the CPA. There is a requirement on the Supplier to keep complete records of each sale transaction pursuant to section 132(1) of the CPA and section 9 of the ABR.
  - e) Two bills of sale (BOS) were not signed by the consumer as per 35(n) of the CPA. One BOS was missing the odometer reading for the trade in vehicle contrary to section 35(m) of the CPA.
3. On September 15, 2017, a third AMVIC Industry Standards inspection was completed on the Supplier. The findings of the inspection were discussed with the Supplier and a Findings Letter dated September 19, 2017 was completed and sent to the business. The follow up inspection found:
- a) The Supplier was not adhering to all-in pricing contrary to section 11(2)(l) of the ABR.
  - b) Advertisements on the website include fine print which does not reflect the all-in pricing requirements contrary to section 11(2)(l) of the ABR.
  - c) There were various issues with the completion of and disclosure of the MFAs in the deal jackets breaching sections 15(1) of the VIR.
  - d) Two bills of sale (BOS) were not signed by the consumer as per 35(n) of the CPA. One BOS was missing the odometer reading for the trade in vehicle contrary to section 35(m) of the CPA.



- e) The Road Hazard Warranty package was sold to a consumer on a used vehicle; however, this warranty is not valid on used vehicles. The Supplier sold the consumer a good knowing that the consumer was unable to receive any reasonable benefit from the good contrary to section 6(3)(a) of the CPA.
4. There were several issues found at more than one inspection. The legislative breaches that were found during two or more of the inspections were:
- a) Various issues with the completion of and/or disclosure of the MFAs in the deal jackets breaching section 15(1) and 16 of the VIR.
  - b) Advertisements on the website include fine print which does not reflect the all in pricing.
  - c) Bills of sale did not include consumer signatures, odometer readings for the trade in vehicle, and the prices for additional accessories, charges and fees were not clearly itemized on the BOS as per sections 35(m) and 35(n) of the CPA.
5. On August 23, 2018, the Supplier provided AMVIC with its written response to the Proposed Administrative Penalty (see Schedule "B"). The Supplier advised that they have implemented a number of changes, based on the recommendations made by the AMVIC Industry Standards department. Some of which includes advertisement reflection all-in pricing, MFAs are being signed and dated at the time of offer by the consumer, technicians are completing MFAs in full, BOS are being reviewed to ensure there is no missing vehicle information or consumer signatures, all protection package warranty contracts and security etching contracts are being signed by the consumer, the financing team has received training on the Road Hazard Warranty product, and internal audits have been mandated to prevent future breaches.

### Applicable Legislation

#### Automotive Business Regulation

##### New classes of licence

##### Section 3

- (1) The following classes of automotive business licence are established:
  - (c) automotive consignment licence;
- (2) A person who holds an automotive sales licence is authorized to carry on a class or classes of the activity of buying or selling vehicles as specified by the Director, including, but not limited to, selling vehicles as
  - (a) a retailer,
  - (b) a wholesaler, or
  - (c) an agent or broker, but not including selling vehicles on consignment.
- (4) A person who holds an automotive consignment licence is authorized to carry on a class or classes of the activity of selling vehicles on consignment as specified by the Director.
- (7) A person who holds an automotive business licence is not authorized to carry on any class or classes of activities that are not specified on the licence.

#### **Section 7**

A person who holds an automotive business licence is not authorized to carry on any class or classes of activities that are not specified on the licence.

#### **Records**

##### **Section 9**

In addition to the requirement to create and maintain financial records in accordance with section 132(1) of the Act, every business operator and former business operator must maintain all records and documents created or received while carrying on the activities authorized by the licence for at least 3 years after the records were created or received.

#### **Advertising**

##### **Section 11**

- (1) Every business operator must ensure that the business operator's advertising indicates in a conspicuous manner
  - (b) in the case of print and television advertising, that the business operator holds an automotive business licence under the Act.
- (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 GST or costs and charges associated with financing, and

#### **General codes of conduct**

##### **Section 12**

- (a) every business operator must comply with section 6 of the Act and in addition must not make any representations, statements or claims that are not true or are likely to mislead a consumer,
- (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,
- (o) comply with any legislation that may apply to the selling, leasing, consigning, repairing, installing, recycling or dismantling of vehicles.

**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.

**Requirements****Section 33**

- (1) A consignment agreement must be in writing and be signed by the business operator and the consignor.
- (2) A consignment agreement must
- (a) set out the name, business address and business phone number of the business operator;
  - (b) set out the name, address and phone number of the consignor;
  - (c) set out a complete description of the vehicle being consigned, including
    - (i) its vehicle identification number,
    - (ii) the year, make, model number, colour, number of doors and options of the vehicle,
    - (iii) the odometer reading of the vehicle, and
    - (iv) the history of the vehicle within the consignor's knowledge, setting out any special uses of the vehicle, such as police or taxi use, whether it was recertified and any other information that a reasonable buyer would want to be aware of;
  - (d) describe the consignor's ownership interest in the vehicle and, if the consignor has knowledge that the vehicle is subject to one or more liens, list those liens;
  - (e) set out when the agreement ends and what happens to the vehicle if it has not been sold when the agreement ends;
  - (f) set out the disbursements, fees and commissions that the business operator may charge the consignor for services provided by the operator;
  - (g) set out the minimum amount that the consignor will receive from the business operator for the sale of the vehicle and whether the consignor will accept another vehicle or other personal property as part of the minimum amount;
  - (h) set out who is responsible for insuring the vehicle during the term of the agreement;
  - (i) set out any repairs or other work on the vehicle that the consignor authorizes the business operator to perform and who is responsible for paying for the repairs or other work;
  - (j) contain the terms referred to in subsection (3).



(3) The following terms are deemed to be contained in every consignment agreement:

- (a) the business operator agrees not to use the vehicle for the operator's personal use without the written consent of the consignor;
- (b) the business operator agrees to be the trustee of any money, vehicles or other personal property that the operator receives as consideration for the sale of the vehicle being consigned less an amount for the operator's disbursements, fees and commission;
- (c) the business operator agrees to provide to the consignor, within 14 days of the date of sale of the vehicle, a copy of the bill of sale that sets out the purchase price for which the vehicle was sold.

(4) A business operator who enters into a consignment agreement must give a copy of the agreement to the consignor.

#### Vehicle Inspection Regulation

##### **Sale of used motor vehicle**

##### **Section 15**

(1) Subject to subsection (2), a dealer in used motor vehicles shall, before entering into a contract to sell a motor vehicle, give to the buyer a used motor vehicle mechanical fitness assessment that contains the following:

- (a) a statement identifying the type of motor vehicle as a truck, motorcycle, bus, van, light truck, automobile or other type of motor vehicle;
- (b) a statement showing the make, model, year, vehicle identification number, odometer reading in kilometres or miles, licence plate number and province of registration of the vehicle;
- (c) the name and address of the dealer selling the vehicle and the name of the technician who issued the mechanical fitness assessment;
- (d) a statement that the mechanical fitness assessment expires 120 days after the date on which it was issued;
- (e) a statement certifying that at the time of sale the motor vehicle
  - (i) complies with the Vehicle Equipment Regulation (AR 122/2009), or
  - (ii) does not comply with the Vehicle Equipment Regulation (AR 122/2009) and containing a description of the items of equipment that are missing or do not comply with the Vehicle

- Equipment Regulation (AR 122/2009);
- (f) the signature of the technician who conducted the mechanical fitness assessment;
  - (g) the date the mechanical fitness assessment was issued.

**Expiry of mechanical fitness assessment****Section 16**

A dealer's mechanical fitness assessment provided under section 15(1) for a used motor vehicle expires 120 days after the date on which it was issued.

**Consumer Protection Act (formerly Fair Trading Act)****Unfair practices****Section 6**

- (1) In this section, "material fact" means any information that would reasonably be expected to affect the decision of a consumer to enter into a consumer transaction.
- (1.1) It is an offence for a supplier to engage in an unfair practice.
- (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;
- (4) Without limiting subsections (2) and (3), the following are unfair practices if they are directed at one or more potential consumers:
  - (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;

**Contents of Sales Contract****Section 35**

- A written direct sales contract must include
- (m) where there is a trade-in arrangement, a description of and the value of the trade-in;
  - (n) the signatures of the consumer and the supplier.

**Duty to maintain records****Section 132**

- (1) Every licensee and former licensee must create and maintain
  - (b) other records and documents described in the regulations for the period specified in the regulations.

## **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 CPA (formerly FTA), ABR, and VIR?**

A routine AMVIC Industry Standards inspection was completed on May 22, 2015. The inspection findings were discussed with the Supplier and the Findings Letter was sent to the business. The



inspector concluded that a follow-up inspection was required due to the legislative breaches found during the inspection.

A second AMVIC Industry Standard inspection was completed on September 6, 2016. As with the initial inspection, the inspection findings were discussed with the Supplier and the Findings Letter was sent to the business. The inspection found legislative breaches consistent with those that had been previously identified in the initial inspection as well as additional legislative breaches.

On September 15, 2017, a third AMVIC Industry Standards inspection was completed. As with the first two inspections, the findings were discussed with the Supplier and the Findings Letter dated September 19, 2017 was provided to the Supplier. The third inspection found multiple legislative breaches consistent with those that had been previously identified in earlier inspections.

Details of the breaches that are currently under consideration are identified in the September 19, 2017 Findings Letter and the supporting documents attached in Schedule "A". Based on the facts outlined by the Industry Standards Officer and the documents, there is evidence to support the breaches as alleged.

Although the previous inspections did not find the Supplier was in breach of section 11(2)(l) of the ABR, the legislative requirement regarding all-in pricing was discussed with the Supplier during the first two inspections for educational purposes. During the third inspection, the ISO reviewed twelve vehicles sold by the Supplier and compared them to their advertised price. This ISO found seven of the twelve sold vehicles which were reviewed, were sold above the advertised price contrary to section 11(2)(l). Four of the seven deals that were sold above the advertised price included a "Village Protection Plan" fee in the amount of \$688.00. During the inspection, it was determined this fee was not a protection plan, but an additional documentation fee. Section 12(o) of the ABR requires automotive businesses to comply with all legislation regarding the sale of vehicles, therefore by breaching sections 15 and 16 of the VIR the Supplier has further breached section 12(o) of the ABR.

All three Findings Letters discuss the legislative requirements regarding MFA compliance pursuant to section 15 and 16 of the VIR. In the third inspection, the deal jackets of the sale of six new sales and 14 used vehicles were reviewed. Of the 14 used vehicle sales, six MFAs did not comply with the MFA requirements. One file had an MFA which did not have a date in which the consumer signed the MFA contrary to section 15 of the VIR. Three files contained MFAs which were signed after the bill of sale indicating the consumers were not provided the MFA prior to entering into an agreement to purchase the vehicles as required by section 15 of the VIR. Two files had MFAs which were not signed by a technician contrary to 15 of the VIR.

In the Findings Letter from the second inspection completed in September of 2016, the ISO identifies concerns found while reviewing the bills of sale in a number of sale jackets. These same concerns were identified during the third inspection in September of 2017. It was identified that one BOS was missing the odometer reading for the trade in vehicle which is a breach of section 35(m) of the CPA. The ISO also noted that two bills of sale were missing customer signatures which contravenes section 35(n) of the CPA.

The AMVIC Industry Standards department has been conducting inspections and providing education to the industry about the legislative requirements expected to be met by automotive businesses. Through the initial two inspections the Supplier had been given the opportunity to implement changes to ensure business practices were brought into compliance with the legislation. Based on the Finding Letters from the inspections, the business has clearly not brought all their business practices into compliance.

In response to the proposed administrative penalty, the Supplier provided written representations explaining that it has taken the steps to address the legislative breaches identified by AMVIC. The Supplier indicated they have made changes to their advertising to include all-in pricing requirements as per Section 11(2)(l) of the ABR. The Supplier further advised that MFAs are being signed and dated at the time of offer by the consumer and that the technicians are completing MFAs in full to ensure compliance with Section 15 of the VIR. Additionally, the Supplier has implemented that all bills of sale be reviewed to ensure there is no missing vehicle information or consumer signatures and that all protection package warranty contracts and security etching contracts are signed by the consumer. Further, training has been provided to the financing team on the Road Hazard Warranty product and they are aware this warranty is only applicable on new vehicles. The Supplier's efforts to achieve regulatory compliance have been taken into account in determining the amount of the administrative penalty.

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 a 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 Village Motors Ltd. operating as Village Honda pay an administrative penalty. This is based on my decision that Village Motors Ltd. operating as Village Honda contravened Section 11(2)(l) and 12(o) of the ABR, Section 15 of the VIR, Section 6(3)(a), Sections 35(m) and Section 35(n) of the CPA.

Taking into consideration the representations made by the Supplier and the representations made by AMVIC's Industry Standards department, the amount of the administrative penalty is **\$11,000.00**.

The amount takes into consideration the factors outlined in section 2 of the Administrative Penalties (*Consumer Protection Act*) Regulation, AR 135/2013 and the principles referenced in *R v Cotton Felts Ltd., (1982), 2 C.C.C (3d) 287 (Ont. C.A.)* as being applicable to fines levied under regulatory legislation



related to public welfare including consumer protection legislation. In particular the Director took into account:

1. The seriousness of the contravention or failure to comply;
2. The fact that the dealership is a large new and used dealership with a significant volume of sales;
3. The previous history of non-compliance identified in the previous inspections were not rectified by the time of the third inspection;
4. The potential harm to the public of the types of conduct outlined, including the fact that consumers were not given a copy of the MFA prior to entering into a contract to purchase or were given an incomplete MFA;
5. The degree of wilfulness or negligence in the contravention or failure to comply;
6. The maximum penalty under section 158.1(3) of the CPA of \$100,000.

**The amount of the administrative penalty is \$11,000.00.**

Pursuant to section 3 of the Administrative Penalties (*Consumer Protection 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 CPA and further disciplinary action will be considered.

Section 179 of the CPA 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 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 (CPA) Regulation, the fee for appealing an administrative penalty is the lesser of \$1,000 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.

Yours truly,

"original signed by"

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

/cz  
Encl.

cc: Evelyn L-J., Manager of Industry Standards, AMVIC