



ALBERTA MOTOR VEHICLE
INDUSTRY COUNCIL

#303, 9945-50 STREET, EDMONTON, ALBERTA T6A 0L4

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May 18, 2018

Administrative Review – 17-11-010

Served Personally

Administrative Penalty

DIESEL REBUILD CENTER LTD.
c/o REGISTERED OFFICE
11735 - 231 STREET NW
EDMONTON AB T5S 2C5

Attention: Ilzat Ametov, Tomas Baskys & Dilshat Izbakiev

Dear Sirs:

**Re: Diesel Rebuild Center Ltd.
Automotive Business Licence B2005825**

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 the Application Report prepared by the AMVIC Investigations Department and the corresponding evidence which is attached as Schedule "A". As well as the information exchanged during an administrative review held at the AMVIC Edmonton office on January 3, 2018.

Licencee Status

1. At the time of the complaint, Diesel Rebuild Center Ltd. (the "Supplier") held an Alberta Provincial Automotive Business licence for repairs: garage.

Complaint received by AMVIC

1. In August of 2017, AMVIC received a complaint from an individual (the "complainant") whose motor vehicle was taken to the Supplier for the reprogramming of the engine management system computer ("ECU") to delete the diesel particulate filter ("DPF"). The complainant paid Diesel Rebuild Center Ltd. \$4,300.00 to complete maintenance on his truck and for the reprogramming of the ECU. According to the Supplier, of the \$4,300.00 dollars paid by the complainant, the cost of the reprogramming the ECU was \$3,000.00.

2. On July 9, 2017, the complainant was advised the work was complete on the vehicle and picked up the vehicle. Immediately after the complainant picked up the vehicle from the Supplier, the check engine light came on. The complainant contacted the Supplier via text message to advise him of the issue and took the vehicle back to the Supplier to have the check engine light cleared. On July 11 or 12, 2017, the complainant picked up the vehicle for the second time. On July 13, 2017, the check engine light came back on, the complainant again took his vehicle in, the Supplier cleared the check engine light and the complainant picked the vehicle up on July 15, 2017. Later the same day the check light come on again as well as the DPF light. This timeline was established based on the text messages exchanged between the complainant and the Supplier (within Schedule A).
3. On or about July 19, 2017, the complainant took the vehicle to a different store, AD, to be inspected. A representative of AD advised the complainant the ECU had not been reprogrammed and the DPF had not been deleted. In order to ensure the truck was in working order, the complainant had AD reprogram the ECU to delete the DPF for the cost of \$3,150.00. Attached within Schedule A is a statement from AD and the invoice for the work completed by AD.
4. When a site visit was conducted by an AMVIC Investigator, the Supplier advised the Investigator the ECU of the complainant's vehicle had been sent to another business, AGD, for the reprogramming to be completed. When the Investigator requested documentation showing the reprogramming of the ECU had been subcontracted to AGD the Supplier could not provide any documentation indicating the work had been subcontracted to AGD. He advised the AMVIC Investigator he trades services with AGD and does not keep any records of these transactions.
5. On October 5, 2017, during the Investigation, the AMVIC Investigator attended AGD regarding the complainant's vehicle. The Investigator was advised by AGD that they had no record of reprogramming the ECU of the complainant's vehicle. He stated he would check his computer at home to determine if he had reprogrammed the ECU. However, the owner of AGD did indicate he exchanges parts and services with the Supplier and do not create any records of these transactions.
6. The same day, the owner of AGD contacted the AMVIC Investigator and advised his home computer had no record showing he had reprogrammed an ECU for the complainant's vehicle.

Findings from Administrative Review

7. An Administrative Review was held on January 3, 2018, at approximately 9:05 a.m., at the Edmonton AMVIC office. In attendance at the Administrative Review were [REDACTED] – acting AMVIC Manager of Investigations North, [REDACTED] – AMVIC Investigator, [REDACTED] – AMVIC Investigator (observer), and Mr. Doug L. – Director of Fair Trading (as delegated) at the time.
8. During the administrative review the Supplier stated the complainant had come to his store for an engine tune up and the reprogramming of the ECU to delete the DPF. However, he is only able to do limited reprogramming and therefore the reprogramming was sent to another

business, AGD, to be completed and no paperwork was created regarding the transaction between the Supplier and AGD.

9. Ms. Baskys stated he had text messages between himself and the owner of AGD on his cell phone showing he had subcontracted the reprogramming and attempted to find them, however he was unable to produce any evidence showing he had subcontracted the reprogramming of the vehicle in this case.
10. At some point, over the course of the transaction, the complainant was unhappy with the work completed by the Supplier. The Supplier offered a refund for the mechanical work and provided the complainant a cheque in the amount of \$1,564.50. According to Mr. Baskys, the complainant returned the cheque and the Supplier completed the mechanical work. It is difficult to determine when this occurred as the invoices provided by the Supplier do not provide much clarity to the details of the full transaction.
11. The Supplier, after hearing the presentation of the AMVIC Investigator's report, stated he does not feel it is fair to reimburse the consumer the money rendered for the reprogramming of the ECU because the consumer ultimately went elsewhere and he does not feel he was given the chance to repair the work.
12. The Supplier did not provide a written representation or contact AMVIC regarding the Proposed Administrative Penalty.

Legislation

Automotive Business Regulation

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.

Consumer Protection Act

Unfair practices

Section 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;

Duty to maintain records

Section 132

- (1) Every licensee and former licensee must create and maintain

- (a) complete and accurate financial records of its operations in Alberta for at least 3 years after the records are made, and
 - (b) other records and documents described in the regulations for the period specified in the regulations.
- (2) Every licensee and former licensee must make the records referred to in subsection (1) available for inspection by an inspector at a place in Alberta and at a time specified by the inspector.

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 ABR and CPA?

The material which formed AMVIC's Investigation Application Report was the result of a complaint by a consumer who had work completed on his motor vehicle by the Supplier. The issue presented by the Investigator that led to the administrative review of the Supplier was whether or not the Supplier completed the reprogramming of the ECU, which the consumer paid to have completed. The findings of the Investigations Applicant Report and the information exchanged during the administrative review is what has been relied upon in relation to this Proposed Administrative Penalty.

During the administrative review when asked about this complaint Mr. Baskys stated he does not feel he holds any responsibility in this situation as he paid another business for the reprogramming of the ECU and therefore does not feel it would be a fair outcome for him to reimburse the complainant for the service. He further stated that he did not feel it was fair as the complainant took the vehicle to a different store and he was not given the opportunity to fix the work. Mr. Baskys did not provide any evidence he paid AGD for the reprogramming of the ECU to delete the DPF nor could he produce any evidence AGD completed the reprogramming for him. Further, the complainant gave the Supplier ample opportunity to fix the problem as he returned twice after the initial reprogramming of the ECU was completed.

Given that neither the Supplier nor AGD have been able to provide any records pertaining to the reprogramming of the ECU to the vehicle in question and the statement provided by AD stating the ECU was still "factory settings", I find that the ECU reprogramming was not completed. Further, based on the timeline established by the text messages (see Schedule A) the complainant took his vehicle back to the Supplier twice, immediately after picking the vehicle up due to the check engine light being on. As such, the complainant did not receive any reasonable benefit from the service, reprogramming of the ECU, he paid the Supplier to complete.

The evidence before me supports that section 132 of the CPA and section 9 of the ABR have been contravened as the Supplier never provided any written records pertaining to the outsourcing of the reprogramming work that was done on the complainant's vehicle. 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."

Mr. Baskys should know or ought to have known that he is legislatively required to create and maintain records pertaining to his business dealings for at least 3 years.

Action

In accordance with section 158.1(a) of the CPA and based on the above facts, I am requiring Diesel Rebuild Center Ltd. pay an administrative penalty. This is based on my decision that that Diesel Rebuild Center Ltd. contravened sections 6(3)(a) and 132 of the CPA and section 9 of the ABR.

Taking into consideration the representations made by AMVIC's investigation department and the information exchanged during an administrative review held on January 3, 2018, 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 impact on the complainant who has been adversely affected financially by the contravention or failure to comply;
5. 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 FTA) 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
Director of Fair Trading (as Delegated)

/kl
Enclos.

cc: [REDACTED] Investigations, AMVIC