



February 1, 2018

Administrative Review – 17-11-011

**Administrative Penalty**

**Served Personally**

1<sup>st</sup> PLACE AUTO LTD.  
c/o REGISTERED OFFICE  
4524, 1 STREET SE  
CALGARY, AB T2G 2L3

**Attention: Marzouk Souraya**

Dear Sir:

**Re: 1<sup>st</sup> Place Auto Ltd.  
Automotive Business Licence B1034472**

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". Additional evidence was provided in correspondence dated December 14, 2017, from the Supplier in their written response to the Administrative Penalty Proposal. Attached as Schedule "B" is a copy of the written representation. Based on all the evidence, I find the facts in this matter to be as follows:

***Licence Status***

1<sup>st</sup> Place Auto Ltd. (the "Supplier") holds an Automotive Business licence and carries on business as an automotive sales business in the Province of Alberta.

***Summary of Complaint***

1. In September of 2017, the complainant, whom resides in [REDACTED] responded to a Kijiji advertisement from the Supplier for a 2008 Land Rover Range Rover Sport which was advertised to have 117,000 kilometers (km) and an asking price of \$15,995.00.
2. The complainant provided the Supplier with a \$1,000.00 deposit in anticipation of purchasing the vehicle. The Supplier discounted the asking price of the vehicle by \$500.00 as the complainant did not want the factory rims. The complainant contends that he was not informed

at the time he provided the deposit that it was non-refundable. The complainant was also not provided with a Mechanical Fitness Assessment (“MFA”) or a CarProof at this time.

3. The Supplier provided the complainant with a bill of sale (“BOS”) for the vehicle that was dated September 6, 2017, which the complainant never signed. The BOS stated the vehicle had 118,000 miles on it and indicated the deposit the complainant provided was non-refundable.
4. The Supplier, at the request of the complainant, provided a CarProof of the vehicle on September 12, 2017 which indicated the vehicle originated in the United States, therefore the odometer would be in miles rather than kilometers, as the Kijiji advertisement stated. As well, the CarProof noted the vehicle was salvage-rebuilt which the complainant contends he was never informed of prior to providing a deposit to the Supplier on the vehicle. Further, there is no indication of the salvage-rebuilt status on the September 6, 2017 BOS.
5. The complainant contacted the Supplier on September 13, 2017, the day after receiving the CarProof, requesting his deposit be returned based upon the information he received from the CarProof. The complainant spoke to Mr. Marzouk Souraya who told him the deposit was non-refundable but he would speak to his boss about the deposit.
6. A formal complainant was received by AMVIC from the complainant regarding the Supplier’s refusal to return his deposit. As part of the AMVIC investigation into this complaint a Corporate Registry search was conducted on the Supplier which found that Mr. Marzouk Souraya is the owner and sole director of 1<sup>st</sup> Place Auto Ltd.
7. On September 27, 2017, AMVIC sent notice of the complaint to the Supplier and no response was received. The AMVIC Investigator assigned to this matter sent a further email to the Supplier on October 6, 2017, requesting an inspection of all of the documentation in regards to this complaint. The Investigator received an email response from Mr. Souraya on October 10, 2017. However, this written response pertained to a totally separate and distinct matter which also dealt with the refusal to return a deposit or provide the requested documentation to AMVIC. The Investigator subsequently contacted Mr. Souraya, again requesting documentation pertaining specifically to this matter and no response was ever provided.
8. The Investigator determined based upon his investigation into the complainant’s matter several sections of the FTA, Automotive Business Regulation (“ABR”), and Vehicle Inspection Regulation (“VIR”) were contravened.

## APPLICABLE LEGISLATION

### Automotive Business Regulation

#### **Advertising**

#### **Section 11**

- (2) A business operator must ensure that every advertisement for an automotive business that promotes the use or purchase of goods or services  
(c) does not misrepresent, through statements or omissions, a vehicle’s mechanical or structural condition,

## **General codes of conduct**

### **Section 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,

## **Vehicle Inspection Regulation**

### **Sale of salvage motor vehicle**

#### **Section 13**

A person shall not sell a motor vehicle that is a salvage motor vehicle unless, before the sale,

- (a) the person provides the buyer with a subsisting salvage motor vehicle inspection certificate for the motor vehicle, or
- (b) the person provides the buyer with a written statement advising that the vehicle is a salvage motor vehicle for which there is no subsisting salvage motor vehicle inspection certificate.

### **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.

### **Consumer Protection 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.
- (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;

#### **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 CPA, ABR and VIR?**

An AMVIC investigation was initiated in response to a complaint made by a consumer (the complainant) in relation to a \$1,000.00 deposit he placed towards a purchase of a 2008 Land Range Rover Sport which he believed had 117,000 km. The Supplier at no time provided the complainant with an MFA, which is legislatively required when a consumer purchases a used motor vehicle from a dealership as cited in section 15(1) of the VIR. As well, the advertisement the Supplier had on Kijiji was misleading as it represented the vehicle as having 117,000 km when in fact it had at least 118,000 miles, which is approximately 212,400 km. This advertisement is contrary to section 11(2)(c) of the ABR.

According to the complainant, the Supplier at no time during the transaction informed him the vehicle was a salvage-rebuilt vehicle to which the complainant discovered upon receiving the CarProof on September 12, 2017. The CarProof noted the vehicle was declared salvage. The Investigator completed a Registry Online Access Delivery System ("ROADS") search which showed the vehicle was declared salvage on February 15, 2017 and rebuilt as of June 14, 2017. This aforementioned issue is in contravention of section 13 of the VIR as the Supplier was required to provide documentation to the consumer regarding the salvage-rebuilt status prior to entering into the sale. Mr. Souraya indicated in his written representation to the Proposed Administrative Penalty he had advised the complainant of the salvage status and the complainant requested the salvage disclosure be omitted from the BOS. Regardless of the reason, the act of omitting the salvage status on the BOS is a contravention of section 13 of the VIR and the Supplier's explanation has further implications he was complicit in the intent to mislead other parties of the status of the vehicle.

When the complainant confronted the Supplier with the above facts, requesting that his \$1,000.00 deposit be returned, the Supplier informed him that the deposit was non-refundable. According to the complainant, Mr. Souraya informed him he would speak to his boss about this. However, Mr. Souraya is

the owner of the business. In his written representation to the Proposed Administrative Penalty, Mr. Souraya indicated that he did not advise the complainant he would have to speak with his boss. This type of statement would contravene section 12(a) of the ABR in that the false statement was designed to intentionally mislead the complainant as to his authority in this matter. However, in this matter I am not satisfied on a balance of probabilities that Mr. Souraya made this statement.

Section 132(2) of the CPA gives the authority to the AMVIC investigator to request the production of records and the Supplier is required to provide the records when requested. The Supplier has not complied with this request in this matter. I find that the Supplier is in breach of this section of the CPA. I do however, accept Mr. Souraya's explanation of extenuating circumstances, as there has been no history of Mr. Souraya failing to produce documents when requested by AMVIC in the past.

### **Action**

In accordance with section 158.1(a) of the CPA and based on the above facts, I am requiring 1<sup>st</sup> Place Auto Ltd. pay an administrative penalty. This is based on my decision that 1<sup>st</sup> Place Auto Ltd. contravened sections 13 and 15 of the VIR, section 11(2)(c) of the ABR and section 132(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 **\$2,500.00**. This penalty amount takes into consideration the factors outlined in section 2 of the *Administrative Penalties (Fair Trading 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. Volume of vehicles: the sales volume considered during this review appears relatively low;
2. The potential harm to the public of the types of conduct outlined;
3. The maximum penalty under section 158.1(3) of the FTA of \$100,000;
4. The deterrent effect of the penalty.

### **The amount of the administrative penalty is \$2,500.00.**

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 *Fair Trading Act* and further disciplinary action will be considered.

Section 179 of 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 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"

Douglas B. Lagore  
Director of Fair Trading (as Delegated)

/kl

Enclos.

cc: [REDACTED] Senior Manager of Investigations, AMVIC