



ALBERTA MOTOR VEHICLE  
INDUSTRY COUNCIL

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November 9, 2017

Administrative Review – 17-08-002

**Administrative Penalty**

Via email: [rob@wachowich.com](mailto:rob@wachowich.com)

1290886 ALBERTA LTD.  
operating as MATTHEW'S AUTO CENTER/QUALITY USED TIRES  
13208 FORT ROAD  
EDMONTON, AB T5A 1C2

**Attention: Bassam (Brad) Kamal**

Dear Sir:

**Re: 1290886 Alberta Ltd. operating as Matthew's Auto Center/Quality Used Tires  
Automotive Business Licence B1024504**

As the Director of Fair Trading (as delegated), I am writing to you pursuant to section 158.1(1) of the *Fair Trading Act* ("FTA") 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 Industry Standards department and dated May 30, 2017 (the "Application Report") and attached as Schedule "A". As well as the correspondence forwarded to AMVIC by Matthew's Auto Center/Quality Used Tires' legal counsel, Mr. Robert Wachowich on September 15, 2017 and October 5, 2017. Based on that evidence, I find the facts in this matter to be as follows:

***Licencee Status***

At the time of the AMVIC Industry Standards inspections 1290886 Alberta Ltd. operating as Matthew's Auto Center/Quality Used Tires (the "Supplier") held a an Automotive Business licence and carried on business as an automotive sales business in the Province of Alberta. The Supplier now holds an Automotive Business licence and carries on the business activities of repairs: specialty service and wholesale.

### ***Direct communications with the Supplier and its Representatives***

1. On January 25, 2016, 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 via email to the business along with an AMVIC advertising package on February 18, 2016. It was determined that a follow-up inspection may be required. The Findings Letter concerns are summarized as follows:
  - a) The AMVIC logo or wording was not on the Supplier's Facebook site, contrary to section 11(1)(b) of the *Automotive Business Regulation* ("ABR").
  - b) Advertisements on the used vehicles displayed for sale, did not include the stock number contrary to section 11(2)(m) of the ABR.
  - c) Deal jackets did not contain any documentation confirming the Supplier's representation of the history of the vehicle to the consumer, pursuant to section 6(4)(h) of the FTA.
  - d) There is a requirement on the Supplier to keep complete business records of each sale transaction for a period of three years pursuant to section 132 of the FTA and section 9 of the ABR. This includes all records created regarding a vehicle including but not limited to the purchase Bill of Sale, details provided by an auction company, repairs made to the vehicle, disclosure documents, MFA and, final Bill of Sale to the customer. The Supplier was not maintaining their business records in accordance with the legislative requirements.
  - e) The consumer was being charged \$6.95 for the AMVIC levy. The correct amount of the AMVIC levy (pursuant section 136(8) of the FTA) is \$6.25.
  - f) The Supplier was reminded to refrain from using the wording "sold as is" on the bill of sale as this term cannot be used and that all used vehicles must have a MFA. The Supplier was directed to section 35 of the FTA which outlines what must be contained in a written direct sales contract.
  - g) The Supplier was reminded to submit outstanding AMVIC levies for the time period of April 2015 to December 2015.
  - h) The Supplier was informed the lease agreements were missing the option to purchase the vehicle at the end of the term. The Supplier was directed to update the lease agreements to include the option to purchase the vehicle for \$1 at the end of the lease agreement pursuant to section 19(1)(j) of the *Cost of Credit Disclosure Regulation* ("COC").
2. On March 27, 2017, 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 April 26, 2017 was completed and sent to the business via email. The follow-up inspection noted the following concerns as summarized:
  - a) The AMVIC logo or wording was not on the Supplier's Facebook site, contrary to section 11(1)(b) as per the ABR.
  - b) One salesperson, Bassam Kamal whose registration had recently expired (renewed on March 23, 2017) had being selling vehicles with an expired registration. Mr. Kamal was reminded as part of good business practices to monitor the AMVIC online database to ensure all salespersons registrations are current, prior to engaging in the sale of vehicles pursuant to section 16(1) of the ABR.
  - c) Advertisements on the used vehicles displayed for sale did not include the stock number contrary to section 11(2)(m) of the ABR.



- d) Deal jackets did not contain any documentation confirming the Supplier's representation of the history of the vehicle to the consumer, pursuant to section 6(4)(h) of the FTA.
  - e) There were various issues with the competition and disclosure of the MFA. Of twelve used vehicle sales seven did not have a MFA, one MFA was missing the vehicle's odometer reading, one MFA was not signed by the consumer, and one was signed by the consumer after the bill of sale date contrary to section 15 of the Vehicle Inspection Regulation ("VIR").
  - f) There is a requirement on the Supplier to keep complete business records of each sale transaction for a period of three years pursuant to section 132 of the FTA and section 9 of the ABR. This includes all records created regarding a vehicle including but not limited to the purchase Bill of Sale, details provided by an auction company, repairs made to the vehicle, disclosure documents, MFA and, final Bill of Sale to the customer. The Supplier was not maintaining their business records in accordance with the legislative requirements
  - g) The consumer was being charged \$6.95 for the AMVIC levy. The correct amount of the AMVIC levy (pursuant section 136(8) of the FTA) is \$6.25.
  - h) The Supplier was reminded to refrain from using the wording "sold as is" on the bill of sale, as this term cannot be used, and that all used vehicles must have a MFA. The Supplier was again directed to section 35 of the FTA which outlines what must be contained in a written direct sales contract.
  - i) The Supplier was reminded to submit outstanding AMVIC levies as the business licence was at "Inactive" status due to the levies not being reported and remitted on time.
  - j) The ISO compared the levy remittance to the vehicle sales records provided by the business. The vehicle sales records did not match the number of vehicles sold that levies were reported and remitted for. Pursuant to section 136(8) of the FTA AMVIC has the authority to collect a levy. The onus is on the business to ensure the reporting and remittance of this levy is accurate.
  - k) The Supplier was informed the lease agreements were missing the option to purchase the vehicle at the end of the term. The Supplier was directed to update the lease agreements to include the option to purchase the vehicle for \$1 at the end of the lease agreement pursuant to section 19(1)(j) of the COC.
3. There were several issues found at the January 25, 2016 inspection that were still evident at the follow up inspection in March of 2017. The legislative compliance concerns that were found at both inspections were:
- a) The AMVIC logo or wording was not on the Supplier's Facebook site, contrary to section 11(1)(b) as per the ABR.
  - b) Advertisements on the used vehicles displayed for sale, did not include the stock number contrary to section 11(2)(m) of the ABR.
  - c) Deal jackets did not contain any documentation confirming the Supplier's representation of the history of the vehicle to the consumer, pursuant to section 6(4)(h) of the FTA.
  - d) There is a requirement on the Supplier to keep complete business records of each sale transaction for a period of three years pursuant to section 132(1) of the FTA and section 9 of the ABR. This includes all records created regarding a vehicle including but not limited to the purchase Bill of Sale, details provided by an auction company, repairs made to the vehicle, disclosure documents, MFA and, final Bill of Sale to the customer. The Supplier was not maintaining their business records in accordance with the legislative requirements.

- e) The consumer was being charged \$6.95 for the AMVIC levy. The correct amount of the AMVIC levy (pursuant section 136(8) of the FTA) is \$6.25.
  - f) The Supplier was reminded to refrain from using the wording "sold as is" on the bill of sale as this term cannot be used and that all used vehicles must have a MFA. The Supplier was directed to section 35 of the FTA which outlines what must be contained in a written direct sales contract.
  - g) The Supplier had not reported and remitted levies within the required timeframe, therefore had outstanding AMVIC levies at the time of both inspections.
  - h) The Supplier was informed the lease agreements were missing the option to purchase the vehicle at the end of the term. The Supplier was directed to update the lease agreements to include the option to purchase the vehicle for \$1 at the end of the lease agreement pursuant to section 19(1)(j) of the COC.
4. On September 15, 2017, AMVIC received written correspondence from the Supplier's legal counsel advising they had been retained by the Supplier regarding the outstanding administrative matter. Attached as Schedule "B" is the September 15, 2017 correspondence. As per this correspondence, AMVIC forwarded correspondence dated September 18, 2017, to the Supplier's legal counsel providing the Supplier an extension to provide a written representation regarding the matter. Attached as Schedule "C" is the September 18, 2017 correspondence. On October 5, 2017, AMVIC received the Supplier's written representation to the matter from his legal counsel and the activity removal form to remove retail sales from the Supplier's business licence. Attached as Schedule "D" is the written representation dated October 5, 2017.

#### APPLICABLE 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.

##### **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
  - (m) includes the stock number of the specific vehicle that is



advertised as being available for sale at the time the advertisement is placed.

#### **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.

#### **Cost of Credit Disclosure Regulation**

##### **Disclosure statement for lease**

##### **Section 19**

(1) As much of the following information as is applicable is required to be disclosed for the purposes of section 93 of the Act:

- (j) for an option lease,
  - (i) how and when the option may be exercised,
  - (ii) the option price if the option is exercised at the end of the term, and
  - (iii) the method for determining the option price if the option is exercised before the end of the term;
- (n) the implicit finance charge;
- (o) the APR;

#### **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.

### **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.
- (2) It is an unfair practice for a supplier, in a consumer transaction or a proposed consumer transaction,
  - (b) to take advantage of the consumer as a result of the consumer's inability to understand the character, nature, language or effect of the consumer transaction or any matter related to the 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.
- (1) Every licensee must comply with the requirements respecting trust accounts established by the regulations under section 143.

#### **Delegation to regulatory boards**

##### **Section 136(8)**

A regulatory board may, with the approval of the Minister, collect money by the levy of assessments on licenses and designated agents as defined in section 102 for the purpose of enabling the board to carry out the powers, duties and functions delegated to it under section (5).

## **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 FTA, ABR, COC and VIR?**

This Administrative Penalty Proposal addresses the matters raised by the Industry Standards Officer ("ISO") arising out of the March 27, 2017 follow-up inspection. During the March 27, 2017 inspection the ISO reviewed the concerns which were addressed in the initial January 25, 2016 inspection and found that none of the concerns were remedied at this time. This follow-up inspection found multiple legislative compliance concerns consistent with those that had been previously identified in the initial inspection as well as a new compliance concerns regarding a salesperson who was selling vehicles with an expired registration, various issues with MFA's, and inaccurate reporting and remittance of levies.



Details of the breaches that are currently under consideration are identified in the April 26, 2017 Findings Letter and the supporting documents attached within Schedule "A". Based on the facts outlined by the ISO and the documents, there is evidence to support the breaches as alleged. Upon review of the Application Report several additional legislative breaches were noted in the Supplier's vehicle lease contract, namely the contract is missing the APR, implicit finance charges, and the option to purchase the vehicle. In reviewing many of the exhibits enclosed with the Application Report I find there has been a breach in sections 19(1)(j), 19(1)(n), and 19(1)(o) of the COC. Nevertheless, in reviewing both Findings Letters the ISO stated the vehicle lease contracts only required the option to purchase the vehicle be added to make the vehicle lease contracts compliant. The onus is on the business to be aware of the requirements they are legislatively required to comply with, however for the purpose of the administrative penalty, I will only be considering the breaches of section 19(1)(j) of the COC, which relates to the requirement of including the option to purchase the vehicle.

The February 18, 2016 Findings Letter is evidence that the Supplier had received notice at that time of compliance concerns in relation to: advertising, documentation, record keeping and levy issues. Aside from the Findings Letter, the ISO also provided verbal feedback and information at the time the inspection was complete. As well, the Findings Letter also provided internet links to information on the AMVIC website that could assist the Supplier in correcting the compliance concerns. This initial inspection provided the Supplier with the opportunity to educate himself and correct the compliance concerns to ensure his business practices were brought into compliance with the legislation and to rectify potential breaches of the legislation. Based on the 2017 inspection which was relied upon in the determination of the administrative penalty, the evidence demonstrates that the Supplier has not taken any steps to address any of the issues that were raised during the 2016 inspection to ensure the Supplier was compliant with the legislative requirements established by the FTA and associated regulations. In fact, some additional contraventions were found to have occurred.

The Supplier was provided an opportunity to respond to the proposed administrative penalty. Correspondence was received on September 15, 2017 from the Supplier's legal counsel. In the September 15, 2017 correspondence, the Supplier's legal counsel stated "We wish to address some of the findings that were determined from the inspections on or about January 25, 2016 and March 27, 2017" yet no comments were made regarding the legislative compliance concerns indicated in the proposed administrative penalty. The correspondence further stated the Supplier

"would be willing to voluntarily surrender or cancel his Alberta Salesperson Registration as the Supplier's intentions are to run Matthew's Auto Centre/Quality Used Tires primarily as a tire shop. Mr. Kamal's intentions are to run Matthew's Auto Centre/Quality Used Tires primarily as a tire shop. We would request that a wholesale license be allowed to permit the occasional sale of motor vehicles to other automotive retail businesses."

Mr. Wachowich on behalf of the Supplier indicated that the concerns raised in the proposed administrative penalty

"primarily relate to retail sales and noncompliance with the regulations for a business carried out in automotive sales in the Province of Alberta" and that the administrative penalty should be "significantly reduced to reflect that there has been no history of violations" and that "there would be no further consumer protection issues to be investigated with future retail automotive sales."

The aforementioned correspondence provided by the Supplier's legal counsel did not address the concerns outlined in the proposed administrative penalty. AMVIC forwarded correspondence to the



Supplier's legal counsel on September 18, 2017 and noted that even if the Supplier were to voluntarily surrender his retail sales business licence this would not absolve the business of dealing with the proposed administrative penalty dated August 23, 2017 and the compliance issued identified herein. Mr. Wachowich was also apprised that even if the Supplier only operated with a wholesale business licence, a registered salesperson would still be required to act as a designated agent for the business. AMVIC provided the Supplier an extension to provide a written representation to address the concerns of the proposed administrative penalty.

A written representation was received by AMVIC on October 10, 2017 from the Supplier's legal counsel which stated the Supplier "respectfully submits there should be no monetary penalty imposed to 1290886 Alberta Ltd. operating as Matthew's Auto Centre/Quality Used Tires." As well the Supplier "advises that while operating a retail licence any complaints to AMVIC were dealt with in a reasonable fashion without any consumers being not fully satisfied." A completed Activity Removal Form was attached to the correspondence which indicated the Supplier's business would only operate as wholesale business and would continue to operate the tire shop.

It is evident by the second AMVIC Industry Standards Inspection the Supplier did not implement any changes to their business practices as outlined in the 2016 Findings Letter and in fact continued to operate in contravention of the legislation and its related regulations. The Supplier through his legal counsel has not provided any relevant information or evidence disputing the information provided to them in the proposed administrative penalty or the Application Report. Even though the Supplier has completed an Activity Removal Form which indicates the Supplier will only continue to operate a wholesale and tire shop business this does not absolve him from dealing with the issues identified in the proposed administrative penalty. Additionally, even though it may (or may not) be true that the Supplier dealt with any complaints received by AMVIC regarding retail sales in a "reasonable fashion without any retail consumers being not fully satisfied" as outlined in Mr. Wachowich's October 5, 2017 correspondence, such issues never formed or were considered in the Application Report completed by the Industry Standards department which led to the proposed administrative penalty.

There exists an onus on the Supplier to do their due diligence and ensure they are complying with the legislation that governs the regulated industry they have chosen to be a member of. 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 contraventions identified during the Industry Standards inspections are serious as consumers have not been provided with accurate and complete information when purchasing a vehicle from the Supplier. Based on the Findings Letters from the first and most particularly the second inspection, the Supplier continued to operate without making any attempt to comply with the applicable legislation.

## **Action**

In accordance with section 158.1(a) of the FTA and based on the above facts, I am requiring 1290886 Alberta Ltd. operating as Matthew's Auto Centre/Quality Used Tires pay an administrative penalty. This

is based on my decision 1290886 Alberta Ltd. operating as Matthew's Auto Centre/Quality Used Tires has contravened sections 11(1)(b), 11(2)(m), 9 and 16(1) of the ABR, sections 19(1)(j) of the COC, section 15 of the VIR, and sections 6(2)(b), 6(4)(h), and 132 of the FTA.

Taking into consideration the representations made by AMVIC's Industry Standards department and the representations made by the Supplier, through his legal counsel, the administrative penalty being imposed is **\$10,000.00**. This penalty amount takes into consideration the factors outlined in section 2 of the *Administrative Penalties (Fair Trading Act) Regulation*, AR 135, 2013 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. The amount of the administrative penalty must be sufficient in that the Supplier and other Supplier's do not view the amount of the penalty as a cost of doing business that is preferable to following the law. In particular, the following factors have been taken into account:

1. The previous history of non-compliance identified in the first inspection which was not rectified by the time of the second inspection;
2. The potential and possible actual harm to the public caused by the conduct outlined. Although the Supplier will no longer be selling motor vehicles to the general public, he will be selling automotive products and services and based upon his past conduct and his inability to follow the legislation the potential to harm the public is a real concern;
3. The maximum penalty under section 158.1(3) of the FTA of \$100,000;
4. The deterrent effect of the penalty;
5. The administrative penalties issued in similar circumstances;

**The amount of the administrative penalty is \$10,000.00.**

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 *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"

Brenda Chomey, BSc.N., J.D., MSc.   
Director of Fair Trading (as Delegated)

BC  
Enclos.

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