



ALBERTA MOTOR VEHICLE
INDUSTRY COUNCIL

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October 19, 2017

Administrative Review – 17-07-008

Served Personally

Administrative Penalty

ANAETULLAH RAMAZAN
operating as RAMAZAN AUTO REPAIR

CALGARY, AB

Attention: Anaetullah Ramazan

Dear Sir:

**Re: Anaetullah Ramazan operating as Ramazan Auto Repair
Automotive Business Licence B1039133**

As the Director of Fair Trading (as delegated), I am writing to you pursuant to section 158.2 of the *Fair Trading Act* (FTA) to provide you with written notice of the administrative penalty issued under this section.

Facts

The evidence before and which has been relied upon me in relation to this matter consists of the material contained in the Application Report and information that was provided to the business as disclosure as attached as Schedule "A" prepared by the AMVIC Investigations Department, the information exchanged during an administrative review held at the AMVIC Calgary office on August 10, 2017 and the written correspondence provided for by the Supplier which was received on September 28, 2017.

Licencee Status

1. At the time of the complaint, Anaetullah Ramazan operating as Ramazan Auto Repair (the "Supplier") held a Alberta Provincial Automotive Business licence for used car sales and service station: which only permits minor services (such as oil changes/lubrications; installation, rotation, repair and balancing of tires and the changing of fan belts/radiator hoses) to be performed, as an automotive technician or heavy equipment service technician is not required.

Complaint received by AMVIC

1. AMVIC received a complaint from an individual (the complainant) whose motor vehicle was taken to the Supplier for the replacement and painting of the rear bumper. The complainant took the vehicle to the Supplier because the individual (I) who caused the damage requested it, as he did not want to go through insurance for the auto body repair. The complainant agreed to this arrangement. The complainant contends that he attended the Supplier's business and was provided with a quote of \$400.00 to fix his bumper. The complainant indicated that he received a quote for the auto body repair from another shop in the amount of \$2,200.00. The complainant consented to have the repair work done at the Supplier's business.
2. The complainant stated he and a friend attended the Supplier's business and found the completed work on his motor vehicle to be poor quality as the paint did not match. The complainant indicated that he informed the Supplier of the same and then attempted to take pictures of the bumper of his car when the Supplier began to push him and heated words were exchanged between the two. The complainant indicated the Supplier refused to give his car back until he was paid and raised the vehicle up on a hoist. The individual who caused the damage (I) attended the Supplier's business and paid the Supplier \$630.00. The complainant then indicated he had his bumper repaired at another business.

Direct communications with the Supplier

3. When a site visit was conducted by an AMVIC Investigator (Investigator) the Supplier denied completing any auto body repair work. The AMVIC Investigator stated the make of the motor vehicle and name of the owner. The Supplier continued to deny completing the work. Completing auto body repairs would be contrary to section 104(1) of the FTA as the Supplier does not hold an AMVIC business licence for that designated activity. Attached as Schedule "B" is a list regarding the classes of automotive repair business licenses one can obtain from AMVIC, this information can be found on AMVIC's website at <http://www.amvic.org/industry-3/licensing/automotiverepairactivities/>.
4. The Supplier was shown a copy of an Interac receipt with the Supplier's name on it, in the sum of \$630.00, which was over possibly \$200.00 more than was the complainant was originally quoted which would be contrary to section 6(4)(u) of the FTA. The Supplier in response informed the Investigator the receipt could have been for anything and that he only provides receipts when a customer asks for one and no work orders are provided to customers.
5. The Investigator returned to the Supplier's business several days after the first visit having obtained a statement from the complainant. The Investigator asked the Supplier again if he had replaced and painted the bumper of the complainant's vehicle, to which he denied. The Investigator then showed the Supplier a picture of the complainant's motor vehicle up on a hoist to which the Supplier indicated that the shop looks like his but he has never seen the motor vehicle before and the vehicle could have been photo shopped into a photo of his shop. The Investigator cautioned the Supplier about lying to a Peace Officer, Mr. Ramazan's response did not change. Knowingly making a false or misleading statement to the Investigator is contrary to section 2.3 of the *Traffic Safety Act* (TSA) and section 140(1) of the Criminal Code of Canada. The Investigator again showed the Supplier a copy of the Interac receipt in the amount of \$630.00 which the Supplier indicated any customer could have dropped it and anyone could

have picked it up off the ground and there is no indication of what the receipt is actually regarding, it could be for the sale of tires or something else.

6. The individual (I) who caused the damage to the complainant's motor vehicle and paid the \$630.00 to the Supplier did not provide the Investigator with a statement as he did not want to be involved.
7. Based on the information provided to the Investigator he concluded the Supplier does not produce work orders for consumers, does not keep track of invoices except for the odd one in a general receipt book and was unable to provide any explanation for the \$630.00 receipt the complainant had provided AMVIC. The Investigator also noted to the Supplier that his AMVIC business licence is only classified for minor services, that which a service station can do (see Schedule B). A Director's Order signed June 29, 2017 was provided to the Supplier ordering him to cease conducting designated activities he was not AMVIC licensed to partake in. This order is contained within the attached Schedule A.
8. The Senior Manager of Investigations provided the Supplier with disclosure of the documents that would be presented at the administrative review via email on August 3, 2017. The documents included statements from the complainant and his witness, a copy of the receipt and a photo of the complainant's motor vehicle in the Supplier's shop (see Schedule A). The Supplier responded via email on August 3, 2017 and appears to ask that he be provided with the bank statement from which he received the \$630.00 payment from as all his customers receive a copy of his paper work matching the Interac receipt and he therefore does not accept what the investigation report stated. He questions where the paper work is that he provided the customer as he gives all his customers' paper work, which is contrary to what he informed the Investigator of during the investigation. The Supplier in an email dated August 4, 2017 informs the Senior Manager of Investigations that he spoke with his accountant who informed him that did work on a white rear bumper of a Jetta for a customer from Africa. Attached as Schedule "C" are the two emails sent by Mr. Ramazan.

Findings from Administrative Review

9. An administrative review was held on August 10, 2017, at approximately 2:30 p.m., at the Calgary AMVIC office. In attendance at the administrative review were Mr. Anaetullah Ramazan, Ms. [REDACTED] – acting AMVIC Manager of Investigations South, Mr. [REDACTED] – AMVIC Investigator, Ms. [REDACTED] – AMVIC Investigator (observer), and Ms. B. Chomey – Director of Fair Trading (as delegated).
10. The Supplier indicated that English was not his first language but he was fluent in French.
11. The Supplier, after hearing the presentation of the AMVIC Investigator's report, recalled that a person he knew ("I") brought in the car in question to the shop to see if he could fix the damage to the bumper. The Supplier stated he wanted to help him as he was a student and was driving a borrowed car when the accident occurred. The Supplier indicated that he told him that he would charge him \$500.00 for the bumper and \$100.00 for the installation. The Supplier stated that prior to this incident he had never put a bumper on a car and further indicated that his shop was not equipped for painting as he does not have the proper ventilation. The Supplier

also stated he now has a licensed mechanic working with him. The Supplier was reminded at the time of the administrative review that he did not have an AMVIC licence to complete any mechanical repair outside the designated activities of his current AMVIC business licence which is for service station, even if he has a licensed mechanic employed. The Supplier indicated that he has been working on obtaining the correct business licence and that the mechanic is not doing work beyond what can be completed within the prevue of his service station AMVIC business licence.

12. The Supplier when asked where he found the replacement bumper indicated that he found it on Kijiji.
13. The Supplier was never able to adequately or fully answer the question relating to why he did not respond to the Investigator's questions during the investigation relating to whether or not he replaced the bumper on the motor vehicle in question. The Supplier indicated that it was not until he spoke with his accountant that he knew he did replace the bumper in question. However, the Supplier has not provided AMVIC any paperwork regarding this auto body repair, including a copy of the paperwork his accountant allegedly has. Section 9 of the ABR requires a business to maintain all records and documents created while carrying on business activities for at least 3 years. No evidence has been provided to substantiate that the Supplier followed this legislative requirement in this instance.
14. The Supplier shared how he creates his work orders, he stated that itemizes each transaction, namely parts, labour and tax and keeps one copy for himself and the other to the customer. However in this case (I) did not want one, yet as noted above, the Supplier has never been able to produce the work order for the bumper repair that correlated to the \$630.00 Interac receipt, yet his accountant was able to inform him that he did in fact repair the bumper.
15. The Supplier denied ever having had any interactions, verbal and/or physical with the actual owner of the motor vehicle relating to this complaint. However, the Supplier noted that if anyone came into his shop and pushed him around he acknowledged he would respond in kind and shared an example of where this has happened in the past.
16. The Investigator noted that throughout the investigative process the Supplier was not forthright/truthful with him regarding the bumper replacement. The Supplier was given multiple opportunities to answer the questions relating to the auto body repair as well as to respond truthfully to the picture he was shown of the car in question in the Supplier's shop.
17. On September 28, 2017, AMVIC received the Supplier's written representation to the proposed administrative penalty. Attached as Schedule "D" is a copy of the written representation.

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.

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,
- (o) comply with any legislation that may apply to the selling, leasing, consigning, repairing, installing, recycling or dismantling of vehicles.

Traffic Safety Act

Obstruction of investigators

Section 2.3

When an investigator is exercising powers or carrying out duties under this Act, a person shall not

- (a) fail to comply with any reasonable request of the investigator,
- (b) knowingly make a false or misleading statement to the investigator either orally or in writing, or
- (c) otherwise obstruct or hinder the investigator.

Criminal Code of Canada

Public Mischief/Punishment

Section 140

(1) Every one commits public mischief who, with intent to mislead, causes a peace officer to enter on or continue an investigation by

Fair Trading Act

Unfair practices

Section 6

(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 of saying anything that might reasonably deceive or mislead a consumer;
- (d) a supplier's representation that the supplier has a sponsorship, approval, status, qualification, affiliation or connection that the supplier does not have;
- (u) a supplier's giving an estimate of the price of goods or services if the goods or services cannot be provided for that price;

Licence required – designated businesses

Section 104

(1) No person may engage in a designated business unless the person holds a licence under this Act that authorizes the person to engage in that business.

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, TSA, and FTA?

This administrative penalty addresses the matter brought forth by an AMVIC Investigator arising out of the complaint made by the consumer as addressed earlier.

The material which formed AMVIC's Investigation Application Report was the result of a complaint by a consumer who had auto body work completed on his motor vehicle by the Supplier. The issues presented by the Investigator that led to the administrative review of the Supplier was whether or not the Supplier was performing a designated automotive activity when he did not have the AMVIC business licence to do so, failure to create, maintain and retain financial records and documents, make misleading statements or claims to the consumer regarding ability to repair the damaged bumper and making false or misleading statements to the investigator regarding the circumstances that led to complaint in the first instance. The findings of the Investigations Applicant Report, the information exchanged during the administrative review and the correspondence of September 28, 2017 is what has been relied upon in relation to this administrative penalty and have supported that multiple breaches of the FTA, ABR and TSA have in fact occurred and addressed earlier.

The Supplier was on two separate occasions afforded the opportunity by the Investigator to be truthful surrounding the circumstances of the complaint, however the Supplier continued to adamantly deny that he replaced the bumper in question until just before the administrative review. The Supplier was also provided the opportunity during the administrative review to explain and clarify what happened in this matter, especially in relation to his interactions with the Investigator, and respond to questions regarding how he creates and maintains his records and documents to no avail, which has led myself to conclude the Supplier was not being truthful and forthright in his role in this matter. As well, the Supplier was also provided with an opportunity to address the concerns raised during the administrative review and proposed administrative penalty itself and subsequently provided a statement indicating that the proposed administrative penalty of \$5,000.00 would be too much as he has a large family to support. The statement did not demonstrate that the Supplier has taken any ownership/responsibility in regards to the matter that led to the complaint in the first place and the Supplier states that he is "very (sic) very honest", yet I did not find this to be an accurate assessment during the administrative review.

Based upon the evidence that I have before me, I am satisfied the Supplier breached several sections of the FTA, namely section 104(1) as it is evident that he did not have the AMVIC business licence to perform the auto body repairs on the complainant's vehicle. As well as sections 6(4)(a) and 6(4)(d) of the FTA and sections 12(a) and 12(o) as he represented to (I) that he could complete the auto body repairs even though he did not hold the correct AMVIC licence to do this type of repair work. As well, the evidence before me supports section 132 of the FTA and section 9 of the ABR have been contravened as the Supplier has never provided any written records/documents pertaining to the 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."

The Supplier has been operating and has held an AMVIC business licence for a service station for a number of years and just as the court stated above the Supplier owes a responsibility to at least develop a basic understanding of the activities he can and cannot perform within the class of business licence he holds within the regulatory regime in which he operates. Mr. Ramazan should know or ought to have known that he is legislatively required to create and maintain records/documents pertaining to his business dealings for at least 3 years.

In regards to section 6(4)(u) of the FTA, there has not been sufficient evidence presented to indicate that the Supplier provided an estimate for a service that could not be completed at that cost.

In terms of section 2.3 of the TSA, with the current evidence before me, I am satisfied on a balance of probabilities that the Supplier did in fact make false and/or misleading statements to the Investigator that hindered the investigation based upon detailed information the Supplier provided at the administrative review regarding his interactions with (I).

Action

In accordance with section 158.1(a) of the FTA and based on the above facts, I am requiring Anaetullah Ramazan operating as Ramazan Auto Repair pay an administrative penalty. This is based on my decision that Anaetullah Ramazan operating as Ramazan Auto Repair has contravened sections 6(4)(a), 6(4)(d), 104(1), and 132 of the FTA, sections 9, 12(a) and 12(o) of the ABR and section 2.3 of the TSA.

Taking into consideration the representations made by AMVIC's Investigation department and the representations made by the Supplier, the administrative penalty being imposed is **\$2,000.00**. 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. In particular, I have taken into account:

1. Scope of economic activity: the economic impact of this automotive business appears to be relatively low;
2. The history of the Supplier not cooperating with the Investigation and provision of false and/or misleading statements;
3. The potential harm to the public in relation to the types of conduct outlined;
4. The maximum penalty under section 158.1(3) of the FTA of \$100,000;
5. The deterrent effect of the penalty;
6. Lack of mitigation the part of the Supplier when apprised of the contraventions to achieve regulatory compliance

The amount of the administrative penalty is \$2,000.00.

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
Director of Fair Trading (as Delegated)

BC/kl
Enclos.

cc: [REDACTED] Senior Manager of Investigations, AMVIC