

April 2, 2020

Administrative Review – 20-02-019
Served via Email: jdenis@guardian.law

Administrative Penalty

1835724 ALBERTA LTD.
o/a OUTBACK CUSTOM TRAVEL TRAILERS
235095 RANGE ROAD 284
ROCKY VIEW COUNTY, AB
T1X 0J9

Attention: Reece Thoen

Dear Sir:

**Re: 1835724 Alberta Ltd. operating as Outback Custom Travel Trailers
Provincial Automotive Business Licence No. B2010655**

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 Alberta Motor Vehicle Industry Council ("AMVIC") investigations department application report (the "Application Report"), prepared by the investigator and the senior manager of investigations. A copy of the Application Report is attached as Schedule "A" to this letter. I have taken into consideration the written representations that were provided to AMVIC on March 5, 2020 which is attached as Schedule "B" and the information exchanged during an administrative review held at the AMVIC Calgary office on March 10, 2020. The Supplier's legal counsel provided written representations dated April 1, 2020 (attached as Schedule "C"), in response to the Proposed Administrative Penalty, which I have also taken into consideration.

Licensee Status

1835724 Alberta Ltd. operating as Outback Custom Travel Trailers (the "Supplier") holds an AMVIC business licence and carries on business as retail sales and repairs: specialty service in the Province of Alberta.

History

On April 26, 2019 the Supplier entered into an Undertaking with the Director acknowledging they failed to comply with the provisions of the CPA and Automotive Business Regulation ("ABR"). Among other conditions, the Supplier undertook to utilize a bill of sale ("BOS") that is compliant with Section 31.2 of the

ABR, maintain accurate business records and documents as required by the legislation, and to not do or say anything that might mislead or deceive a consumer.

Summary of Investigations

Case File 19-08-343

1. On Aug. 18, 2019, AMVIC received a complaint regarding a deposit that was not refunded by the Supplier. The consumer ("SL") entered into an agreement with the Supplier on Jan. 8, 2018 in which the Supplier was to build a custom travel trailer with a completion date of April 2019. SL provided the Supplier with a \$5,000 deposit. This occurred prior to the Supplier entering into an Undertaking with the Director.

On Aug. 11, 2019, SL cancelled the build as it was not completed within the timeframe promised and she was unable to use it that summer. The Supplier provided SL with a postdated cheque in the amount of \$2,500 which was dated for Dec. 7, 2019, almost four months from the day SL cancelled the build. The Supplier's email to the consumer when they placed their order indicated a deposit of \$5,000 was required, of which \$2,500 is non-refundable and that if the consumer cancels the build, the refundable portion will be refunded within 30 days of receipt of the cancellation. The Supplier's postdated cheque did not fall within the 30 days in which they indicated they would provide the refund.

Further, the Supplier did not provide AMVIC a Supplier response to the complaint even after having been provided a three day extension. The investigator was not able to obtain a Supplier response until Oct. 4, 2019 when he attended the Supplier's place of business.

In August 2019, the Supplier sold the trailer to another consumer. The investigator acquired two separate bills of sale which indicate different amounts owing. Further, the bills of sale did not comply with the legislation. This transaction occurred after the Supplier entered into the Undertaking with the Director.

Case File 19-10-035

2. On Oct. 2, 2019, AMVIC received a complaint regarding a deposit not being refunded by the Supplier. The consumer ("LB") entered into an agreement with the Supplier in November 2018 in which the Supplier was to build a custom travel trailer with a completion date of May or June 2019. LB provided the Supplier with a \$5,000 deposit. This occurred prior to the Supplier entering into an Undertaking with the Director.

On June 29, 2019, LB decided to cancel the order due to delay of the trailer being built and the lack of communication by the Supplier. The Supplier's email to the consumer when they placed their order indicated a deposit of \$5,000 was required, of which \$2,500 is non-refundable and that if the consumer cancels the build, the refundable portion will be refunded within 30 days of receipt of the

cancellation. LB did not receive the refund of \$2,500 until Jan. 10, 2020. This was just over six months after LB cancelled the build.

Again, the Supplier did not provide AMVIC a Supplier response to the complaint even after having been provided a three day extension.

Case File 19-07-089

3. In July 2019, AMVIC received a consumer complaint regarding a deposit not being refunded by the Supplier. In April 2018, the American consumer ("GT") entered into an agreement with the Supplier to build a custom travel trailer and provided the Supplier with a deposit of \$5,000 USD which at the time was equivalent to \$6,402 CAD. In April 2019, GT cancelled the build as it was not completed within the timeframe promised. The Supplier sent GT the refund via cheque. When GT deposited the cheque it was determined there was a stop-payment put on the cheque. GT still has not received a refund.
4. During the course of the investigation, the investigator identified inconsistent business names being listed on various forms by the Supplier. At the top of their BOS it states "Outback Trillium Trailers". At the bottom of the same document, 1835724 Alberta Ltd. Outback Custom Lightweights is listed as the business name. The AMVIC business licence of the Supplier indicates the legal entity of the Supplier, 1835724 Alberta Ltd., however does not include any applicable trade name. On Feb. 28, 2020, the Supplier indicated they updated their business information in the Alberta Corporate Registry to include the trade name of Outback Custom Travel Trailers. The Supplier still has not sent in a request to AMVIC to update the name on their AMVIC business licence.
5. As part of the April 26, 2019 Undertaking, the Supplier agreed to assist AMVIC with an inspection to be completed by Sept. 30, 2019. The investigator put forth that the AMVIC inspector was denied and that the Supplier had communicated to the inspector that they would not have time until the middle of October. To date, no inspection has taken place.
6. The Supplier has had five consumer complaints that have gone to AMVIC investigations; all involving deposit refunds where the Supplier has asked for time to pay or has written post-dated cheques. The investigator submitted that based on the information received in these complaints he is concerned with the financial viability of the Supplier.
7. On March 5, 2020, the Supplier's legal counsel provided AMVIC with written representations in advance of the scheduled administrative review which included a sworn affidavit from his client (see Schedule "B").
8. The written representations stated the Supplier has been current with all its obligations to its customers, including but not limited to honouring timelines and refunding deposits. The Supplier further advised they have been abiding by the agreed upon Undertaking and making efforts not to have said anything that might mislead or deceive a consumer. The Supplier attached a BOS to their

submission which they believe complies with the regulations. The Supplier remarked that when the AMVIC inspector proposed to conduct the inspection in or around October 2019, the principals were all out of the country on business. AMVIC has not contacted the Supplier since their return, however they remain willing to assist AMVIC to complete an inspection upon reasonable scheduling accommodations.

9. The Supplier put forth their financial statements from 2016 and 2017 evidencing net income in each year in support that they are a financially stable business and pose no risk to the public. The Supplier indicated their 2018 financials are currently with an accountant and their 2019 financials are not yet due. The Supplier also indicated they are willing to provide the 2018 and 2019 financials in due course to the AMVIC inspector in a follow-up inspection.
10. During the administrative review, the Supplier acknowledged their shortcomings with respect to their BOS. They indicated that what the investigator has not included or was not provided in their Supplier documents were their build sheets and documentation that is provided to each consumer. The Supplier committed to amending their BOS to comply with the legislation. The Supplier was provided with a copy of the applicable legislation by the Director.
11. The Supplier could not provide an explanation for the delay in providing a Supplier response on the consumer complaints or refunding consumers their deposits after cancelling an order in a timely fashion. The Supplier remarked they receive a large amount of emails and took responsibility for not being more receptive or organized in providing a Supplier response to AMVIC, and addressing emails in a timely fashion.
12. In response to case file 19-07-089, the Supplier indicated they did not put a stop payment on their refund cheque to the American consumer. The stop payment was a result of their bank suspecting bank fraud and stopping the payment. The Supplier committed to refunding the consumer appropriately and addressing this complaint with the investigator.
13. The Supplier's legal counsel put forth that a recommendation to cancel the business licence of the Supplier would not be appropriate in the circumstances, and that an administrative penalty would be appropriate.
14. On April 1, 2020, the Supplier provided their written representations in response to the Proposed Administrative Penalty (see Schedule "C").

Legislation

Automotive Business Regulation

Bill of sale

Section 31.2

- (1) A business operator engaged in automotive sales must use a bill of sale that includes the following:

- (a) the name and address of the consumer;
- (b) the number of the government-issued identification that the business operator uses to confirm the identity of the consumer;
- (c) the name, business address and licence number of the business operator;
- (d) if a salesperson is acting on behalf of the business operator, the name and registration number of the salesperson;
- (e) the make, model and model year of the vehicle;
- (f) the colour and body type of the vehicle;
- (g) the vehicle identification number of the vehicle;
- (h) the date that the bill of sale is entered into;
- (i) the date that the vehicle is to be delivered to the consumer;
- (j) an itemized list of all applicable fees and charges the consumer is to pay, including, without limitation:
 - (i) charges for transportation of the vehicle;
 - (ii) fees for inspections;
 - (iii) fees for licensing;
 - (iv) charges for warranties;
 - (v) taxes or levies, including GST;
- (k) the timing for payment by the consumer of the fees and charges under clause (j);
- (l) an itemized list of the costs of all extra equipment and options sold to the consumer in connection with the vehicle or installed on the vehicle at the time of sale;
- (m) the total cost of the vehicle, which must include the fees, charges and costs listed under clauses (j) and (l);
- (n) the down payment or deposit paid by the consumer, if any, and the balance remaining to be paid;
- (o) if the consumer is trading in another vehicle to the business operator in connection with the purchase of the vehicle,
 - (i) information about the vehicle being traded in, and
 - (ii) the value of the trade-in allowance incorporated into the cost of purchase of the vehicle;
- (p) the balance of any outstanding loan that is incorporated into the cost of purchase of the vehicle;
- (q) if, in connection with the purchase of the vehicle, the business operator enters into a credit agreement with the consumer or arranges a credit agreement for the consumer, the disclosure statement required under Part 9 of the Act;
- (r) an itemized list of any items or inducements the business operator agrees to provide with the vehicle at no extra charge;
- (s) the odometer reading of the vehicle at the time the bill of sale is entered into, if the vehicle has an odometer and the odometer reading is available to the business operator;

- (t) the maximum odometer reading of the vehicle at the time of delivery to the consumer if the vehicle has an odometer and
 - (i) the odometer reading is not available to the business operator at the time the bill of sale is entered into, or
 - (ii) the vehicle is a new, specifically identified vehicle;
 - (u) any mechanical fitness assessment that has been issued under the *Vehicle Inspection Regulation* (AR 211/2006);
 - (v) any disclosure statement or documentation respecting a vehicle's previous use, history or condition, including disclosure statements or documentation required under the laws of another jurisdiction;
 - (w) a declaration that the business operator has disclosed to the consumer the information required under section 31.1.
- (2) The business operator must ensure that all restrictions, limitations and conditions imposed on the consumer under the bill of sale are stated in a clear and comprehensible manner.

Codes of conduct**Advertising****Section 11**

- (1) Every business operator must ensure that the business operator's advertising indicates in a conspicuous manner
- a) the name of the business operator as set out in the licence or the trade name of the business operator as set out in the licence, and

Consumer Protection Act**Duty to maintain records****Section 132**

- (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.

Non-compliance with orders, etc.**Section 163** Any person who

- (d) fails to comply with an undertaking under this Act contravenes this Act and is guilty of an offence.

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 and ABR?

The material which formed the Application Report was the result of consumer complaints received by AMVIC regarding deposits not being refunded in a timely manner and consumers being misled. The subsequent investigations identified other breaches of the legislation pertaining to not providing Supplier responses, continued deficiencies with respect to their BOS, not advertising with the appropriate business name, and breaching an Undertaking. After reviewing all the information before me, the breaches that are currently under consideration are based on AMVIC case files 19-08-343 and 19-10-035 (the "case files").

The Supplier was subject to an administrative review in 2019, which was as a result of a consumer complaint regarding not refunding a deposit. The administrative review resulted in the Supplier voluntarily

entering into an Undertaking with the Director on April 26, 2019. While the transactions in the case files occurred prior to entering into the Undertaking with the Director, the legislative breaches under consideration occurred after entering into the Undertaking. In the Undertaking, the Supplier agreed to not say or do anything that might mislead or deceive a consumer, ensure their representations to the consumers are accurate, to use a BOS that is compliant with Section 31.2 of the ABR, and to assist AMVIC with an inspection by Sept. 30, 2019.

In the course of the investigations of the case files, the Supplier failed to provide Supplier responses and documentation when requested by AMVIC breaching Section 132(2) of the CPA. Further, the Supplier is not advertising using the business name as set out on their AMVIC licence as required by Section 11(1)(a) of the ABR.

The investigation of case file 19-08-343 determined the Supplier continued to use a non-compliant BOS after entering into the Undertaking breaching Section 31.2 of the ABR. Additionally, the BOS provided by the Supplier in their written representations does not comply with the legislation. By not utilizing a compliant BOS, the Supplier has further breached the April 26, 2019 Undertaking and therefore Section 163(d) of the CPA.

The Supplier made representations to the consumers indicating they would receive the refundable portion of their deposit back within 30 days if they cancelled their custom trailer builds, and failed to do so in the case files. This was a similar issue to the matter which resulted in the Undertaking. By not adhering to their own company terms and conditions and a condition of the sale, the Supplier has breached the Undertaking of April 26, 2019 and therefore Section 163(d) of the CPA.

It is the Director's opinion that the Supplier is not being receptive and responsive to their consumers, the regulator in making changes to their business practices, or responding to complaints and emails. This is resulting in consumer complaints and further violations of the legislation. However, based on all the evidence before, the Director is not concerned with the financial viability of the business.

AMVIC follows a progressive enforcement model when enforcing consumer protection laws. Administrative action may include a written warning, condition(s) added to the licence, charges under the legislation, Administrative Penalty, Director's Order, Undertaking, and suspension or cancellation as outlined in Section 127 of the CPA. When determining an appropriate enforcement measure, the Director will consider several factors before making his decision to ensure what level of enforcement is appropriate to the contravention. The aggravating factors include consumers not receiving their refunds in a timely manner, the failure to comply with legislation on the part of the Supplier and the Supplier's inability to comply with the rather straight forward requirements of the legislation. At the administrative review, the Supplier took responsibility and acknowledged that his business practices were non-compliant with the legislation and is demonstrating a willingness to work with the regulator. The Director considered the representations from the Supplier regarding their position on an appropriate Administrative Penalty. However, an 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.

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 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

This Administrative Penalty is taking into account the breaches of the legislation found during the investigation regarding the case files. However, the Supplier's recent history with AMVIC including entering into an Undertaking and then failing to abide by that Undertaking, and failure to comply with the legislation cannot be ignored. In reaching a proposed Administrative Penalty, the Director took into consideration the number and seriousness of the contraventions.

Action

In accordance with Section 158.1(a) of the CPA and based on the above facts, I am requiring that 1835724 Alberta Ltd. operating as Outback Custom Travel Trailers pay an Administrative Penalty of **\$1,500**. This is based on my opinion that 1835724 Alberta Ltd. operating as Outback Custom Travel Trailers contravened Sections 31.2(1) and 11(1)(a) of the ABR and Sections 132(2) and 163(d) of the CPA.

Taking into consideration all the representations made by the Supplier and the representations made by AMVIC's investigation department, the amount of the Administrative Penalty is **\$1,500**.

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 potential harm to the public of the types of conduct outlined;
2. The seriousness of the contraventions or failure to comply;
3. The previous history of enforcement and non-compliance identified by the investigator;
4. The degree of willfulness or negligence in the contravention or failure to comply;
5. The maximum penalty under Section 158.1(3) of the CPA of \$100,000 and;
6. The deterrent effect of the penalty.

The amount of the Administrative Penalty is \$1,500.

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 **thirty (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 (*Consumer Protection Act*) 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 \$750.

Yours truly,

"original signed by"

Alberta Motor Vehicle Industry Council (AMVIC)
Gerald Gervais, Registrar
Director of Fair Trading (as Delegated)

GG/kl
Enclos.

cc: [REDACTED], Senior Manager of Investigations, AMVIC