

March 10, 2021

Administrative Review – 20-12-003
Served via Email: [REDACTED]

Administrative Penalty

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

Attention: Reece Thoen

Dear Reece Thoen:

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

As the Director of Fair Trading (as delegated)(the "Director"), 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 Jan. 7, 2021 which is attached as Schedule "B" and the information exchanged during an administrative review held via teleconference call on Jan. 12, 2021. The Supplier's legal counsel provided written representations dated March 5, 2021 (attached as Schedule "C"), in response to the Proposed Administrative Penalty, which I have also taken into consideration.

Licencee Status

1835724 Alberta Ltd. operating as Outback Trailers (the "Supplier") holds an AMVIC business licence and carries on the business activities of 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"). 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, among other things.

On April 2, 2020, the Supplier was assessed an Administrative Penalty of \$1,500. The Supplier had failed to provide documentation, breached an agreed upon Undertaking, used a non-compliant bill of sale, and was advertising with a business name not associated to their AMVIC business licence. In engaging in these business practices, the Supplier contravened Sections 132(2) and 163(d) of the CPA and Sections 31.2 and 11(1)(a) of the ABR.

Summary of Investigations

Case File 20-01-497

1. On Jan. 27, 2020, AMVIC received a complaint regarding an awning that was included in the purchase price of a trailer but was not supplied upon delivery of the trailer. The consumer ("AC") entered into an agreement with the Supplier on Jan.1, 2017 in which the Supplier was to build a custom travel trailer that included an awning valued at \$895 plus GST as one of the options. When AC picked up the trailer the awning was not installed on the trailer. The Supplier signed a note dated April 19, 2017 agreeing to provide an awning and to pay for the installation. AC received the awning however, the Supplier failed to provide the monies to have the awning installed as previously agreed upon. The cost to install the awning is approximately \$368. AC called and emailed the Supplier numerous times regarding the status of the \$368 along with other issues. However, the Supplier stopped communicating with them.
2. A request was sent to the Supplier on March 24, 2020 to provide a Supplier response and documents regarding the consumer complaint. The Supplier was given a deadline of April 2, 2020 to do so. On April 22, 2020, an AMVIC investigator emailed the Supplier requesting a Supplier response and all documents be provided by April 27, 2020. On May 29, 2020, the Supplier responded to the investigator advising that the matter had been referred to their legal counsel. To date, the Supplier has failed to make the records available to AMVIC.
3. On Jan. 7, 2021, the Supplier's legal counsel provided AMVIC with written representations in advance of the scheduled administrative review which included a sworn affidavit from the Supplier (see Schedule "B").
4. In the sworn affidavit, the Supplier states they tried to reimburse AC for the installation costs and provided email responses which support this. The Supplier is willing to reimburse AC the \$368 owed if provided with a proper address to send the payment. The Supplier states they responded to the AMVIC complaint and as such do not believe they breached their Undertaking of April 26, 2019. During the administrative review, the Supplier stated that AC was aware that the awning was not installed on the trailer when he picked it up due to the hardware not being available from the manufacturer which was explained to AC at the time.

Case File 20-08-241

5. In August 2020, AMVIC received a complaint against the Supplier regarding the refund of a deposit. The consumer ("WW") entered into an agreement with the Supplier on Aug. 19, 2019 in which the Supplier was to build a custom travel trailer with a completion date of May 16, 2020. WW provided the Supplier with a \$7,200 deposit which was processed on Aug. 27, 2019.
6. The Supplier notified WW of a new delivery date of June 2020 due to the COVID-19 pandemic. WW was willing to wait the extra month however when the trailer was still not delivered by the end of June, she sent the Supplier seven emails and did not receive a response. The Supplier eventually responded to WW advising that her trailer would not be ready until the end of July and she would receive a delivery date in the following week. On June 28, 2020, WW sent the Supplier a registered letter cancelling the build and requested her deposit back. WW claims she had emailed and called the Supplier 24 times without a response.
7. The bill of sale ("BOS") utilized in this transaction is not compliant with legislative requirements. On April 26, 2019 the Supplier entered into an Undertaking with the Director in which they undertook to utilize a BOS that is compliant with Section 31.2 of the ABR.
8. On Aug. 17, 2020, an AMVIC Consumer Services Officer ("CSO") emailed the Supplier requesting a response to WW's complaint and the documents regarding the transaction. The email sent by the CSO indicated:
"A failure to abide by this Notice, including a failure to provide all records pertaining to this complaint, is an offence under the Consumer Protection Act and may also be dealt with as a licensing matter by the Director as delegated".
9. On Aug. 25, 2020, AMVIC received an email from the Supplier with a response regarding the complaint, however they did not provide any documents as requested. There is no indication as part of the application report that documents were ever provided to AMVIC by the Supplier as per legislative requirements in Section 132(2) of the CPA.
10. In the sworn affidavit provided to AMVIC on Jan. 7, 2021 (see Schedule "B") the Supplier does not believe WW is entitled to the remaining portion of the deposit. The Supplier submitted that as per their policy and provided on their build sheet, \$2,500 of the deposit is non-refundable. Additionally, the Supplier does not believe they intentionally breached their Undertaking of April 26, 2019. The Supplier provided a copy of their BOS which they verily believe to be compliant to the legislation.
11. During the administrative review, the Director took the opportunity to explain in plain language the Supplier's obligations in supplying records as per Section 132(2) of the CPA. The Supplier advised they now understand what is required of them and apologized for the miscommunication in not supplying their records to AMVIC as requested.

12. The Supplier acknowledged their shortcomings with respect to the BOS utilized with WW which was after their agreed upon Undertaking of April 26, 2019. The Supplier has taken steps to improve their business practices.
13. On March 5, 2021, 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.

Consumer Protection 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 consumers or potential consumers:
- (a) a supplier's doing or saying anything that might reasonably deceive or mislead a consumer;
 - (n) a supplier's representation that goods or services will be supplied within a stated period if the supplier knows or ought to know that they will not
 - (t.1) a supplier's representation regarding an agreement for continuing provision of services if the supplier fails to provide prominent and full disclosure of the details of the agreement, including duration, changes in price, renewals, extensions or amendments, or if the supplier fails to obtain the consumer's express consent to renewals, extensions, or amendments of the agreement

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 two consumer complaints received by AMVIC regarding a consumer allegedly being misled and a consumer not being refunded all of their deposit. The subsequent investigations identified other breaches of the legislation pertaining to not providing documents, deficiencies with respect to their BOS, and breaching an Undertaking. After reviewing all the information before me, the breaches that are currently under consideration are based on AMVIC case files 20-01-497 and 20-08-241 (the “case files”).

In the course of the investigations of the case files, the Supplier failed to provide records when requested by AMVIC breaching Section 132(2) of the CPA. It is the opinion of the Director, despite the Supplier being assessed an Administrative Penalty in April 2020 that included this violation, the Supplier does not seem to understand their legislative obligations of making their records available for inspection by an inspector at a place in Alberta and at a time specified by the inspector. During the administrative review, the Director again explained to the Supplier, in plain language, their obligations under Section 132(2) of the CPA.

In relation to case file 20-01-497, on a balance of probabilities, the Director did not find that the Supplier misled AC in failing to supply the awning as agreed upon. Therefore the Supplier did not contravene Section 6(4)(a) of the CPA. This matter could have likely been easily resolved in 2017 had the Supplier been more receptive to AC's emails and phone calls. The Supplier provided AC with an awning and agreed to pay for the installation. The Supplier provided evidence consisting of emails that support that they tried to send an e-transfer to AC for the installation cost of \$368. In the Supplier's sworn affidavit dated Jan. 7, 2021 and during the administrative review, the Supplier stated they were willing to reimburse AC the \$368 owed if provided with a proper address to send the payment. The Director is taking the Supplier's word in good faith that they will follow through with this promise. Further, in reviewing the evidence relating to case file 20-01-497, the Director did not find the Supplier contravened Section 163(d) of the CPA.

Case file 20-08-241 determined that WW entered into an agreement with the Supplier on Aug. 19, 2019 in which the Supplier was to build a custom travel trailer with a completion date of May 16, 2020. WW provided the Supplier with a \$7,200 deposit which was processed on Aug. 27, 2019.

Due to the COVID-19 pandemic, the Supplier notified WW that they were unable to fulfil the agreed upon delivery date of May 16, 2020 and indicated the travel trailer would be delivered in June 2020. Following which, the Supplier then notified WW that the travel trailer would not be completed in June 2020 and indicated it would be ready near the end of July 2020. On June 28, 2020, WW sent the Supplier a registered letter cancelling the build and asking for her deposit back. WW received a portion of the deposit back but feels she is still owed \$2,500. The Supplier's website indicates that \$2,500 of the initial deposit is non-refundable. The Supplier indicated that all of their clients have to complete their orders online where a section highlights about the \$2,500 non-refundable deposit.

The Supplier advised their business was closed during certain periods of the ongoing pandemic. The Supplier could not have known they would be unable to supply goods or services to WW in the specified timeframe when they entered into the transaction prior to the COVID-19 pandemic. In the opinion of the Director, it would be unreasonable in this circumstance to find the Supplier breached Sections 6(4)(n) and 6(4)(t.1) of the CPA or that the Supplier misled the consumer as per Section 6(4)(a) of the CPA.

The investigation of case file 20-08-241 determined the Supplier continued to use a non-compliant BOS after entering into the Undertaking. The BOS involved in this consumer transaction does not include: the government issued identification that the business operator uses to confirm the identity of the consumer, the licence number of the business operator, the full name of the salesperson acting on behalf of the business operator, and their respective salesperson registration number. Additionally, in the BOS documents reviewed, the first page contains only the first name of the consumer and on the second page the consumer's last name is misspelled. By not utilizing a compliant BOS nor ensuring complete and accurate information is contained on the BOS, the Supplier has contravened Section 31.2 of the ABR and Section 163(d) of the CPA.

The Supplier entered into the transaction with WW using a non-compliant BOS only four months after voluntarily entering into an Undertaking in April 2019 with the Director; in which the Supplier undertook to ensure the use of a compliant BOS. Further, in their Jan 7, 2021 written representations (see Schedule "B"), the Supplier provided a copy of their BOS which they believe to be compliant with the legislation. Although this BOS is an improvement to their BOS which they used in the transaction with WW, it still does not comply with the legislative requirements set out in the ABR. This evidences that the Supplier has continued to use a non-compliant BOS after not only entering in to the Undertaking in 2019 but also after being assessed an Administrative Penalty for the same offence in 2020. Further, the Director notes having a compliant BOS template/form is only one part of ensuring the BOS is compliant. The Supplier also must ensure they are completing the BOS in each transaction in compliance with the legislation by ensuring the information required is filled in and accurate.

On Oct. 31, 2018, new legislation was put into effect with regards to BOS requirements. Between Sept. 25, 2018 and Nov. 6, 2018 AMVIC sent out a number of industry bulletins, updated the AMVIC website with information regarding the new legislation, sent multiple bulletins to inform the industry and the public regarding the changes, updated social media regularly, sent out a special edition of the IMPACT newsletter to the industry regarding the legislative changes and all AMVIC employees had an email signature attached to staff emails regarding the legislative changes. These are just a few of the initiatives that AMVIC took to ensure all licensees were advised of the legislative changes that were coming into effect on Oct. 31, 2018 regarding the BOS.

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 of a licence 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 in this matter include breach

of an Undertaking, the continued use of a non-compliant BOS, failing to provide records as per legislative requirements, and the Supplier's inability to comply with the rather straight forward requirements of the legislation.

At the administrative review, the Supplier took responsibility for their actions and apologized for the miscommunication with the AMVIC representatives. The Supplier stated they have a willingness to work with the regulator and improve upon their business practices. 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.

The Supplier has been subject to two previous administrative actions in less than two years, an Undertaking in 2019 and an Administrative Penalty of \$1,500 which was assessed in 2020. These previous administrative actions resulted from consumer complaints where the Supplier contravened the same or similar sections of the legislation. The current Administrative Penalty being proposed in this document is the second administrative action where the Supplier had breached the agreed upon Undertaking entered into less than two years ago. The Director acknowledges the Supplier has made some changes to their business practices. However, in the opinion of the Director, the Supplier has not taken learning or understanding the legislative requirements they must adhere to seriously.

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 in the last two years which includes voluntarily entering into an Undertaking in 2019 and being assessed an Administrative Penalty of \$1,500 in 2020 in which the Supplier failed to abide by the Undertaking cannot be ignored. In reaching an Administrative Penalty, the Director took into consideration the number and seriousness of the contraventions in relation to the case files as well as the Supplier's breach of the voluntarily agreed upon Undertaking.

The Supplier requested 60 days to pay the Administrative Penalty assessed "*because the ongoing COVID-19 pandemic has put a serious strain on [their] business*". AMVIC considered the current economic climate and as requested will grant the Supplier 60 days from the date of this Administrative Penalty to provide payment as per the guidelines below.

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 Trailers pay an Administrative Penalty of **\$2,500**. This is based on my opinion that 1835724 Alberta Ltd. operating as Outback Trailers contravened Section 31.2(1) 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 **\$2,500**.

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

The amount of the Administrative Penalty is \$2,500.

Pursuant to Section 3 of the Administrative Penalties (*Consumer Protection Act*) Regulation, you are required to submit payment within **sixty (60) 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 \$1,000.

Yours truly,

"original signed by"

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

GG/kl
Encl.

cc: [REDACTED] Senior Manager of Investigations, AMVIC