

In the Matter of an Appeal pursuant to Section 179 of the *Consumer Protection Act*, RSA 2000, c C-26.3 Arising from a June 16, 2020 Decision of the Director of Fair Trading (as Delegated) to Cancel the Automotive Business Licence of Arza Ltd.

### **DECISION OF THE APPEAL BOARD**

Appeal Board: Christopher Davison (Chair), Bellanne Meltzer Toren, Joshua Selby

Counsel:        Maher Ibrahim:        Appellant on his own behalf and, for the Appellant Arza Ltd.

                 Paula Hale:                for the Respondent, the Director of Fair Trading (as delegated) ("the Director")

### **NATURE OF APPEAL**

1. On June 16, 2020, the Registrar of Alberta Motor Vehicle Industry Council ("AMVIC"), acting as the Director, rendered a decision to cancel the Provincial automotive business licence of Arza Ltd. ("Arza") pursuant to s. 127 of the *Consumer Protection Act*, RSA 2000, c C-26.3 ("CPA").
2. In brief summary, the Director found that Arza sold a vehicle to a customer that they knew was not roadworthy, and did not take seriously the legislative requirements expected of a regulated business operating in the automotive industry.
3. More specifically, the Director's decision found that Arza had:
  - a. mislead the consumer about the vehicle condition and history (breaches contrary to s. 6(3)(a), 6(4)(a) of the CPA; breaches contrary to s. 12(a), s. 31.1(1)(g)/(h), s. 31.1(2)(c), s. 31.2(1)(v)/(w), and s. 31.3 of the Automotive Business Regulation, Alta Reg 192/1999 ("ABR"));
  - b. permitted an unsafe vehicle to be driven on the road (breaches contrary to s. 12(o) of the ABR and s. 65(1)(b) of the *Traffic Safety Act*, RSA 2000, c T-6 (TSA));
  - c. Deficient record keeping (breaches contrary to s. 132 of the CPA and s. 9 of the ABR); and
  - d. failed to keep AMVIC registration information current (breaches contrary to s. 134(1) and (2) of the CPA).
4. The Director found it was therefore in the public interest to cancel Arza's licence.

5. Arza has appealed the Director's decision.

## **DECISION**

6. For the following reasons, the Appeal Board finds:
- a. The Director withdrew allegation of s. 6(4)(aa) of the *CPA*, s. 12(c) of the *ABR*, and s. 52(1)(c) of the *TSA*. The allegations of breaches of s. 6(2)(b) and s. 6(4)(b)/(e)/(h) of the *CPA* are dismissed due to concerns over procedural fairness.
  - b. The allegations of breaches of s. 6(3)(a) of the *CPA* and s. 65(1)(b) of the *TSA* via s. 12(o) of the *ABR*; and s. 134(2) of the *CPA* are dismissed as they have not been proven on a balance of probabilities.
  - c. The allegations of breaches of s. 31.1(1)(g)/(h) and s. 31.1(2) of the *ABR*; s. 31.2(1)(v) of the *ABR*; s. 31.2(1)(w) and s. 31.3 of the *ABR*; s. 6(4)(a) of the *CPA* and s. 12(a) of the *ABR*; s. 9 of the *ABR*; s. 132 of the *CPA*; and s. 134(1) of the *CPA* are established on a balance of probabilities.
  - d. In consideration of the breaches that have been established, the Board confirms the Director's June 16, 2020 decision to cancel the Provincial business licence of Arza Ltd. No decision is made as to costs.

## **JURISDICTION AND STANDARD OF REVIEW**

7. On June 16, 2020, the Registrar of AMVIC acting as the Director rendered a decision to cancel the business licence of Arza pursuant to s. 127 of the *CPA*.
8. On July 10, 2020, Arza appealed this decision pursuant to s. 135(c) and s. 179(1)(c) of the *CPA*. They provided a Notice of Appeal as is required under s. 4 of the *Appeal Board Regulation*, Alta Reg 195/1999 ("*APR*").
9. On August 20, 2020, this Appeal Board ("*Board*") was appointed pursuant to s. 179(2) of the *CPA*.
10. On November 9, 2020, the Board provided a Notice of Hearing to the parties, pursuant to s. 6 of the *APR*.
11. This appeal is a new trial of the allegations raised in the Director's decision (s. 179(8) of the *CPA*). This means, at all times, the onus is on the Director to prove the allegations found in the Director's decision and to prove that the business licence of Arza should be cancelled.
12. The Board may vary, quash, or confirm the Director's decision (s. 179(6) of the *CPA*).

## HEARING PROCEDURE AND PROCEDURAL FAIRNESS

13. Hearing dates were originally set for December 17 and 18, 2020.
14. On December 2, 2020, by application of the Director and due to unavailability of their witness, the Board adjourned the hearing to February 17 and 19, 2021.
15. After the full hearing day on February 19, 2021, the hearing was adjourned for a further half-day on February 22, 2021.
16. Due to COVID-19 concerns, the hearing dates were conducted virtually over Zoom videoconferencing. The first hearing date (February 17, 2021) was a short meeting primarily to allow the Board members, parties, and the witness an opportunity to become familiar with the technology and to ensure there were no difficulties on the full hearing day.
17. A high standard of procedural fairness is required when the right to continue in one's profession or employment is at stake (*Irwin v Alberta Veterinary Medical Association*, 2015 ABCA 396 ("*Irwin*") at para. 45).
18. The Board ensured Arza was provided a high degree of procedural fairness by doing the following:
  - a. We verified that they had been provided with disclosure of the investigation well in advance of the hearing, on October 12, 2020.
  - b. We verified that hearing documents had been exchanged between parties 11 days in advance of the hearing date, on February 8, 2021.
  - c. We asked Mr. Ibrahim on February 17, 2021 if he understood that he had the right to be represented by counsel. He said yes. We asked if he still wanted to proceed without counsel. He said yes.
  - d. As Mr. Ibrahim was self-represented, we explained the procedure of the hearing to him on February 17 and then in great detail on February 19, 2021.
  - e. We asked Mr. Ibrahim if he objected to any of the Board members deciding his case. He stated no.
  - f. We explained the various parts of the hearing to Mr. Ibrahim, such as opening remarks, cross examination and closing argument.
  - g. We ensured he was able to properly cross examine the Director's witness.
  - h. We very clearly explained that he did not have to testify on his own behalf. He chose to do so.
  - i. We asked clarification questions to Mr. Ibrahim during his testimony to ensure he had addressed all relevant issues.
  - j. We asked him for submissions and if he had any objection in regard to each application and instance where exhibits were admitted.

- k. We considered his status as a self-represented party when it was relevant to our decision.

## **ISSUES**

19. Issue (1) Should the Board consider allegations not made on the Director's decision?

20. Issue (2) Does the evidence establish a breach of:

- a. S. 6(3)(a) of the CPA, and s. 65(1)(b) of the TSA via s. 12(o) of the ABR.
- b. S. 31.1(1)(g)/(h), s. 31.1(2), s. 31.2(1)(v)/(w) and s. 31.3 of the ABR.
- c. S. 6(4)(a) of the CPA and s. 12(a) of the ABR.
- d. S. 132 of the CPA and s. 9 of the ABR.
- e. S. 134(1)(a) and s. 134(2) of the CPA.

21. Issue (3) Given the breaches established, should the Board confirm, vary or quash the Director's decision to cancel the business licence of Arza?

## **ANALYSIS**

**Issue 1: Should the Board consider allegations not made on the Director's decision?**

22. In their materials, the Director included a copy of an overview of AMVIC's position on Arza's breaches. This was disclosed to Arza only ten days prior to the hearing.
23. At the outset of the hearing, the Board brought to the attention of the parties that the Director had included breaches of the CPA, ABR and TSA in their overview that were not alleged on the Director's decision.
24. The Board expressed concerns about procedural fairness and whether Arza had sufficient notice to properly respond to the additional allegations. The Board asked for submissions.

### *Director's and Arza's Argument*

25. The Director voluntarily withdrew the following allegations: s. 6(4)(aa) of the CPA, s. 12(c) of the ABR, and s. 52(1)(c) of the TSA.
26. In regard to the remaining new allegations, the Director argued that these had substantial overlap with breaches found on the Director's decision. They argued that effectively nothing new was being alleged, and there were no surprise allegations that Arza would have to additionally prepare for.



27. Arza stated that they did not fully understand this technical legal issue. They would be attempting to defeat the Director's case against Arza as a whole, and would not be addressing every alleged breach individually. Arza had no objection to the Director withdrawing some allegations.
28. The Board accepted the Director's withdrawal of those particular allegations and reserved our decision until after the hearing.

#### *Board's Decision*

29. The Director voluntarily withdrew s. 6(4)(aa) of the *CPA*, s. 12(c) of the *ABR*, and s. 52(1)(c) of the *TSA*. We therefore do not have to deal with these allegations.
30. The Board dismisses all other allegations found in the Director's overview that were not alleged on the Director's decision for the following reasons:
- a. As stated above, Arza is owed a high standard of procedural fairness since their licence to practise business is at stake (*Irwin* at para. 45).
  - b. While this is an appeal of the Director's decision, it is a new trial of the issues before this Board (s. 179(8) of the *CPA*). For our purposes, the Director's decision is simply allegations.
  - c. The Board finds the Director's decision therefore has the purpose of a "call to arms", notifying the Respondent of the purpose of the dispute to come. The practical question this Board therefore has to determine is whether Arza "know[s] the case he has to meet, or is he prejudiced in the preparation of his defence..." (*Brendzan v. Law Society (Alberta)*, 1997 CanLII 14825 (AB QB) at para. 45-48).
  - d. Mr. Ibrahim is a self-represented individual and therefore requires more time to prepare than a party represented by counsel.
  - e. The Board finds that overlap in the elements of new allegations to old allegations is not the same thing as being the same elements, or requiring the same preparation.
  - f. Arza was provided the Director's decision on July 10, 2020, while he was provided the Director's overview February 8, 2021. This was only 11 days prior to the hearing date where evidence was called.
  - g. The Board therefore finds that Arza was prejudiced in the preparation of their defence by the late disclosure of additional allegations.
  - h. As such, the Board dismisses all new allegations that were not found in the Director's decision, in particular: s. 6(2)(b) and s. 6(4)(b)/(e)/(h) of the *CPA*.

**Issue 2: Does the evidence establish breaches of the CPA, ABR and TSA?**

*Uncontroverted Facts*

31. Based on consistent evidence provided by both parties and by uncontroverted documentation, the Board finds that the evidence establishes the following facts on a balance of probabilities:

- a. Arza is a corporation registered with the Government of Alberta. Mr. Ibrahim is the sole director and shareholder.
- b. From February 23, 2019 until March 31, 2020, Arza was licenced with AMVIC. Arza was licenced to engage in used automotive sales.
- c. Mr. Ibrahim has been engaged in automotive sales for the last 10 years. Most recently, from February 23, 2019 until March 31, 2020, Mr. Ibrahim was licenced as an automotive salesperson with AMVIC and registered under Arza.
- d. On December 13, 2018, Mr. Ibrahim purchased a 2015 Subaru Forester, VIN# [REDACTED] ("the vehicle") from an online auction named Copart. This vehicle had a designation of "salvage" in the Alberta government registry. The vehicle had primarily front end damage. The total value of the damage was estimated by Copart to be \$13,337.00.
- e. The vehicle was subsequently repaired to some extent.
- f. On May 17, 2019, the vehicle was inspected by Frame King Ltd. ("Frame King") vehicle inspection facility, regulated by Alberta Transportation. It was inspected by a mechanical and structural automotive technician. The vehicle failed inspection. The odometer of the vehicle read 112911 kms.
- g. The vehicle was, again, subsequently repaired to some extent.
- h. On May 22, 2019, the vehicle was again inspected by Frame King to the same standard as on May 17. The vehicle passed inspection. The odometer of the vehicle read 112920 kms.
- i. On May 23, 2019, the vehicle's designation was changed to "rebuilt" in the Alberta government registry.
- j. Subsequently, the complainant found an advertisement on Facebook stating that Arza was selling the vehicle.
- k. On June 26, 2019, the complainant attended to Arza's place of business to potentially purchase the vehicle. She test drove the vehicle, and then purchased it. She provided a \$700 deposit and signed a bill of sale.
- l. On June 27, 2019, the complainant attended to Arza's place of business with her husband. The complainant paid the remaining balance on the vehicle and provided another bill of sale and other documentation.
- m. On December 3, 2019, the vehicle was inspected by Performance Auto to the same standard as on May 17. The vehicle failed inspection. Significant structural damage was noted. The odometer of the vehicle read 113504 kms. This inspection was done at the request of the complainant.

- n. On December 13, 2019, at the request of Peace Officer [REDACTED] the vehicle's designation was changed to "unsafe-" in the Alberta government registry.
- o. December 16, 2020, Arza reimbursed the complainant for the cost of the vehicle, towing expenses, and the cost of the subsequent inspection.

**Issue (2a) Does the evidence establish a breach of s. 6(3)(a) of the CPA, s. 65(1)(b) of the TSA via s. 12(o) of the ABR?**

*Relevant Legislation*

- 32. CPA s. 6(3) It is an unfair practice for a supplier (a) to enter into a consumer transaction if the supplier knows or ought to know that the consumer is unable to receive any reasonable benefit from the goods or services.
- 33. ABR s. 12 Every business operator must comply with section 6 of the [CPA] and in addition must (o) comply with any legislation that may apply to the selling, leasing, consigning, repairing, installing, recycling or dismantling of vehicles.
- 34. TSA s. 65(1) Except as otherwise permitted under this Act, a person shall not do any of the following: (b) permit another person to drive or operate a vehicle on a highway unless that vehicle complies with the vehicle and equipment standards set out in the regulations in respect of that vehicle.

*Director's Evidence*

- 35. The Director entered the following documentary evidence in regard to this issue:
  - a. The witness statement of the complainant. This was written by the complainant's son, and it contains statements of what occurred from both the complainant and her husband. It states:
    - i. The vehicle appeared to be working correctly during the test drive on June 26, 2019.
    - ii. A week after the vehicle was purchased, the complainant noted obvious and heavy shaking with the vehicle. She took it to a friend who was a mechanic. The friend warned her to immediately stop driving the vehicle as there were "major life-threatening issues with it."
  - b. Documents provided by the complainant:
    - i. The bill of sale, dated June 27, 2019, which states "inspection report and recertification were given to the buyer", and "vehicle had a previous accident, recertified."
    - ii. A mechanical fitness assessment, signed by the complainant.

- iii. 3 of 4 pages of a "motor vehicle record of inspection." The bottom corner of the first and third pages were initialled by the complainant.
- iv. Compu-care Auto service Detailed Mechanical Inspection which shows significant problems with the alignment. The odometer of the vehicle read 113482 kms.

36. The Director called one witness – Peace officer [REDACTED]. She provided the following evidence in regard to this issue:

- a. [REDACTED] has been a peace officer and investigator for AMVIC for the last 6.5 years.
- b. On August 8, 2019, a complaint was made to AMVIC in regard to this matter.
- c. On August 30, 2019, a consumer services officer requested further information from Arza in regard to the complaint. No response was received from Arza.
- d. [REDACTED] opened the investigation on October 29, 2019.
- e. In November 2019, [REDACTED] attempted to contact Arza; however, AMVIC Consumer Services had on August 30, 2019 found their listed phone number was out of service. She attended to Arza's place of business on November 7 and found it was open but no longer selling cars while Mr. Ibrahim was out of the country. Mr. Ibrahim phoned her on November 8 and provided some details about the repair of the vehicle, but was unable to say who repaired the vehicle or provide documentation. [REDACTED] emailed Mr. Ibrahim on November 21 and requested information as to who performed the repairs before the vehicle failed inspection, and who performed the repairs after it failed inspection. Mr. Ibrahim responded November 25 and provided the name and phone number of Ali Q, the individual that performed the initial repairs. He did not provide any information in regard to who made the repairs after the vehicle failed inspection as he did not remember. Mr. Ibrahim stated if it was minor repairs, he would have made these repairs. On November 27, [REDACTED] responded asking for further details. On November 28, Mr. Ibrahim provided the location of Ali Q's automotive shop, but stated again he did not know who did the repairs after the vehicle initially failed inspection.
- f. On December 5, [REDACTED] spoke to Ali Q and he denied repairing the vehicle. [REDACTED] emailed Mr. Ibrahim and advised him of Ali Q's denial. On December 10, Mr. Ibrahim responded by stating he had talked with Ali Q, and that Ali Q lied about fixing the vehicle because he did not want to get into trouble. On December 12 and 13, [REDACTED] talked with Ali Q, who again denied that he or anyone who worked with him fixed the vehicle.
- g. On January 21, 2020, [REDACTED] spoke to Monica, the owner of Performance auto, who stated that she had spoken to Ali Q. Ali Q had admitted to repairing the vehicle, but stated the repair was done inadequately because Mr. Ibrahim had not paid him sufficiently.
- h. Monica further stated that Ali Q told her the reason the vehicle was able to pass inspection at Frame King was that Mr. Ibrahim is friends with the owner of Frame King. Monica did not want to be involved with this matter further.

- i. [REDACTED]'s opinion is that she is still not sure who repaired the vehicle, or how much it cost to repair the vehicle.
- j. [REDACTED]'s opinion is that Mr. Ibrahim was not cooperating with the investigation.
- k. [REDACTED] spoke to the complainant's son and husband on the phone, but never spoke to the complainant as she was told the complainant does not speak English. What the complainant's son and husband told [REDACTED] was consistent with the witness statement of the complainant.
- l. In response to the question, "Did the complainants have knowledge this was a salvage vehicle?" [REDACTED]'s answer was, "Not to my knowledge."
- m. [REDACTED] asked the complainant and her husband about what the Facebook ad stated. They have yet to provide a response.
- n. The Compu-care mechanical assessment was done by Tom Chou. Compu-care is where the vehicle was taken after the complainant noted it was shaking while accelerating. This is not a government regulated inspection. Mr. Chou is an automotive service technician, but not an autobody technician. He stated to [REDACTED] during her visit to Compu-care on November 20, 2019, that he did not have to be an autobody technician to see there were major problem with the frame of the vehicle.
- o. The mechanical fitness certificate is required by law but is only a visual inspection of the vehicle. This is a very different inspection than the "motor vehicle record of inspection."
- p. [REDACTED] stated that AMVIC has had concerns about Frame King's work quality in the past. Frame King was unable to provide invoices for the inspections done to the vehicle.
- q. It was [REDACTED]'s opinion that the Performance Auto inspection shows significant damage.
- r. During cross examination [REDACTED] admitted she does not have any notes of when the vehicle was taken to Compu-care.
- s. During cross examination [REDACTED] admitted that the Performance Auto inspection appears much more complete than the Frame King inspection.
- t. Frame King has been subject to [REDACTED] as this is the [REDACTED] however, did not know the outcome of the [REDACTED]

#### *Arza's Evidence*

37. Arza entered the following documentary evidence in regard to this issue:

- a. 4 of 4 pages of a "motor vehicle record of inspection" dated May 22, 2019. The bottom corner of the first and third pages were initialled by the complainant.
- b. "Salvage vehicle inspection certificate" dated May 22, 2019.
- c. Photographs of the damaged vehicle which were obtained from Copart.
- d. Photographs of the repaired vehicle that Mr. Ibrahim took near Arza's place of business.
- e. A Compu-care receipt for an inspection of the vehicle, dated October 16, 2019.
- f. An MBNA bill which shows he paid Frame King \$325.55 on May 21, 2019,

38. Arza called one witness – Mr. Ibrahim. He provided the following evidence in regard to this issue:

- a. He was still unable to remember the name of Ali Q's shop where the vehicle was repaired.
- b. Initially Mr. Ibrahim testified the advertisement was not posted on Facebook. After a hearing break, he changed his testimony because he remembered that he did, in fact, use Facebook to advertise the vehicle.
- c. He did not pressure the complainant during the transaction. She spoke English and attended with a friend who was a mechanic because the vehicle had been in an accident. She was able to negotiate and bring the price down.
- d. The complainant saw pictures of the damaged vehicle prior to repairs. Both the complainant and the mechanic looked at the vehicle before the test drive.
- e. He provided to the complainant both the "motor vehicle record of inspection" and the "Salvage vehicle inspection certificate." The bill of sale says as much. The complainant signed the bill of sale.
- f. [REDACTED] did not initially talk to Ali Q but rather his brother. Mr. Ibrahim talked to Ali Q and they cleared up any confusion, however after that Ali Q would not answer his phone calls.
- g. The complainant's statement says that the Compu-care inspection was done one week after purchase of the vehicle; however, the Compu-care receipt, which the complainant provided to Mr. Ibrahim when he purchased the vehicle back, says it is a receipt for payment made on October 16, 2019.
- h. Mr. Ibrahim was initially unable to provide an exact amount for the total cost of the repair, and had to be pressed by questions from the Board to come up with an estimate whatsoever. Mr. Ibrahim eventually testified that he paid Ali Q \$2700 for repairs because Arza provided most the parts from another non-operational 2015 Subaru Forester that he had already purchased. The actual cost of the repair including parts would be closer to \$4500. The total cost of the vehicle to Arza would therefore be approximately \$13000.
- i. Mr. Ibrahim believes he broke even on the sale, or lost money.
- j. Frame King did the inspection. The "Salvage vehicle inspection certificate" shows that two different regulated technicians inspected the vehicle and gave it a pass.
- k. He is not friends with the owner of Frame King. He has a business relationship. Moreover, while one of the technicians was the owner of Frame King, the structural technician is a different person altogether with whom he did not have any relationship. Frame King hires technicians which are contractors.
- l. He provided an MBNA bill which shows that he paid for the Frame King inspection on the date the vehicle was under re-inspection, one day prior to the vehicle passing inspection.
- m. He left the country June 29, 2019 with his family. He returned late August 2020 so his children could go back to school in Calgary, and then left the country again. He is still out of the country, awaiting the reinstatement of his licence. He is currently out of the country due to his licence being cancelled in Alberta.



- n. He stated that [REDACTED] Frame King and found no wrongdoing.
- o. During cross examination he admitted that he deals with 5 to 20 vehicles per month; he typically has 5 to 7 on his lot. He sells 10 rebuilt vehicles per year.
- p. During cross examination, Mr. Ibrahim was unable to state whether it was his handwriting on Frame King's rebuilt vehicle work plan. Mr. Ibrahim was presented with an electronic copy of the work plan. He testified it was either his hand writing, or someone from Frame King.
- q. During cross examination, Mr. Ibrahim stated he did not give [REDACTED] the documents he provided at the hearing because he wanted to pull the exact file for [REDACTED]
- r. During questioning from the Board, Mr. Ibrahim stated the reason he never provided the MBNA bill to [REDACTED] is that he thought she was asking for different documents.
- s. During questioning from the Board, Mr. Ibrahim was asked if the roadworthiness of the vehicle was the complete responsibility of the government. Mr. Ibrahim responded that he went through the government inspected procedure. It was not up to him – he followed the procedure, and then Arza bought the car back when problems emerged.

#### *Director's and Arza's Argument*

- 39. The Director argued that Mr. Ibrahim's testimony was largely self-serving. He provided no explanations as to who repaired the vehicle, where it went during the time period it was being repaired, exactly how much it cost, and so on. His evidence was based on usual practice. The lack of detail was not plausible or reasonable.
- 40. The Director also asked that the Board draw a negative inference based on the lack of documents. While Mr. Ibrahim provided some documents to help his case, he was generally unable to provide any. As Arza is in a regulated industry, and is required to keep these documents, the Board should draw a negative inference.
- 41. The Director argued that Mr. Ibrahim provided evidence that it cost him \$2700 to repair the vehicle. This is the first time anyone has heard this figure and it is obvious to anyone that \$2700 would not be enough to repair this vehicle to a state that would be safe. Mr. Ibrahim should know that well given his experience in the industry.
- 42. Arza admitted though they did not keep proper records and follow all regulations, to the best of their ability they provided all the information they had to the customer. The vehicle was put through proper repair and inspection and Arza did not know it did not comply with standards. There was some wrongdoing in terms of the inspection, which is not their fault.

For inspection vehicles to be rebuilt, the government tells Arza what they must do. The inspection tells them whether it is roadworthy or not. The inspections are done by individuals who are licenced and it is not Arza's fault if the inspection was faulty.

#### *Board's Decision*

43. The Board agrees with the Director's argument that Mr. Ibrahim is not credible. His answers were evasive, and self-serving. He was unable to answer direct questions such as if a document contained his handwriting or not. He did not provide plausible answers when questioned about why he did not provide documents during the investigation. He provided evidence at the hearing that he did not provide to [REDACTED] during the investigation, and could not reasonably explain why. At best, Mr. Ibrahim was a witness who had a terrible memory, was uncooperative with investigations, and had an uncaring attitude in regards to keeping proper records as a member of a regulated business. The Board places little weight on his testimony unless it was corroborated by reliable documentation, or had additional reliability due to its self-incriminating nature.
44. That being said, in order for the Board to find that these breaches are proven, the evidence must be sufficient to prove the essential elements on a balance of probabilities.
45. S. 6(3) of the CPA and s. 65(1)(b) of the TSA via s. 12(o) of the ABR requires the Director to prove that Arza knew or ought to have known that the vehicle was not able to benefit the complainant, and that he knew or ought have known the vehicle was not up to proper vehicle standards before letting it be driven.
46. The Director must therefore prove both of the following two elements: (1) that the condition of the vehicle at the time of sale was not roadworthy and (2) that Arza knew or ought to have known the condition of the vehicle was not roadworthy at the time of sale.
47. With respect to element (1), the Board finds that it is more likely than not that the vehicle was not roadworthy at the time of the sale.
48. The Board generally accepts the evidence provided in the complainant's statement. Despite the complaint or her husband not being called to testify, their written statement is generally corroborated by the documents they provided, [REDACTED]'s testimony in regards to her interview of



Mr. Chou at Compu-care, and the Performance Auto inspection. We do not find the gaps of information and other inconsistencies of this evidence to reduce its weight significantly.

49. The Board finds that the vehicle began to shake one week after being purchased, and that they took the vehicle to a mechanic who told them it was unsafe to drive. The evidence of the Performance Auto inspection, and the extent of the frame damage found during that inspection, further convinces the Board that the vehicle had a damaged frame at the time of sale.
50. The Board therefore also finds it is more likely than not the vehicle was improperly repaired at the time of sale, and that Frame King inadequately inspected the vehicle.
51. However, with respect to element (2), the Board does not find that the evidence establishes on a balance of probabilities that Arza knew or ought to have known that the vehicle was not roadworthy at the time of sale.
52. In order to establish element (2), in terms of direct evidence, the Director offers the statement of Monica, owner of Performance Auto, who heard from Ali Q that Mr. Ibrahim and the owner of Frame King colluded to ensure that an unfit car passed inspection. Since this statement was provided orally to [REDACTED] the Director is adducing triple hearsay evidence. Though the Board is not bound by the laws of evidence (s. 14(1) of the *APR*), we are certainly not obliged to ignore them entirely and still need to consider the reliability and weight to place on evidence (*Lavallee v. Alberta (Securities Commission)*, 2010 ABCA 48 at para. 16). We find this evidence is too unreliable to establish that Arza colluded with Frame King or that Arza knew the Frame King inspection was inadequate. We find that this evidence is too unreliable to establish what Arza knew or ought to have known at the time of sale.
53. In terms of circumstantial evidence of what Arza knew or ought to know at the time of sale, the Director offers the fact that the vehicle shook after a week, the opinion of mechanic Mr. Chou who inspected the vehicle at Compu-care, the Performance Auto inspection, and cost of repairs being too low.
54. The Board does not find that any of this evidence, individually or in combination, establishes what Mr. Ibrahim ought to know at the time of sale when considered against the fact that

Arza had the vehicle inspected at a government regulated facility, and it passed inspection by two government regulated technicians prior to the sale. Though we have found the repair of the vehicle and the Frame King inspection were objectively inadequate, there is insufficient evidence which proves Arza knew or ought to have known that. The evidence does not establish that even if Arza had conducted a reasonable examination of the vehicle prior to the sale, that they would have detected the extent of the damage.

55. The Director suggests that the Board should draw a negative inference based on Mr. Ibrahim's failure to cooperate, failure to keep records, and Mr. Ibrahim's misleading statements to the complainant at time of sale. The Board does not find this evidence logically supports a significant enough inference to impute knowledge upon Arza about the roadworthiness of the vehicle. We have certainly already considered these factors when drawing a negative inference towards credibility, and in our findings about the negligent manner in which Arza ran their business.
56. To be clear, the fact that the evidence is not sufficiently convincing to meet the standard of "know or ought to know" does not mean the Board endorses Arza's conduct in regards to the repair or sale of the vehicle. We find that Arza was completely reckless in regards to the condition of the vehicle at the time of the sale. We accept Mr. Ibrahim's self-incriminating testimony that he considered his job to be simply to take the vehicle to any mechanic and then to an inspection and if it passed, his job was done. The Board finds his lack of regard to the quality of the repair work or automotive professionals used to be reprehensible given that a substantial portion of Arza's business is rebuilding severely damaged vehicles so that they can be sold and safely used by the public. We think that Arza ought to have been more diligent in ensuring the vehicle was repaired properly.
57. That being said, "ought to have been more diligent" is not the same as "know or ought to know." The evidence is insufficient to establish the standard of "knew or ought to know" on a balance of probabilities.
58. The Board has the following comments for the Director: we would expect more and better evidence to have been gathered by the investigator on this point. If it is the Director's *general practice to not call complainants or witnesses at the hearing*, we would expect that

witnesses would write their own statements personally and then, in writing, answer clarifying questions from the investigator. Better yet, affidavits could provide us with more reliable evidence. For example, ■ testified to a conversation she had with Mr. Chou where he discussed his experience with the vehicle and expressed an opinion about how obvious the damage was. It would be a much-improved practise to ask him to write a statement down in his own words, with an explanation of his background and education, and then have an investigator ask follow up questions which are recorded along with his answers, in his own writing. Additionally, a statement or affidavit from an automotive or structural technician could have been obtained. This is a case where higher quality evidence in this regard might have made the difference in our finding for this breach.

59. At all times, it is the Director's burden to prove the alleged misconduct occurred on a balance of probabilities. This evidence has to be sufficiently "clear, convincing and cogent" to satisfy the balance of probabilities test (*F.H. v. McDougall*, 2008 SCC 53 at para. 46). The Board finds the evidence, considered in totality, is not sufficiently clear, convincing and cogent as to establish on a balance of probabilities that Arza knew or ought to have known about the non-roadworthy condition of the vehicle at the time of the sale.
60. Accordingly, the Board dismisses the alleged breaches of s. 6(3) of the CPA and s. 65(1)(b) of the TSA via s. 12(o) of the ABR.

**Issue (2b) Does the evidence establish a breach of s. 31.1(1)(g)/(h), s. 31.1(2), s. 31.2(1)(v)/(w) and s. 31.3 of the ABR?**

*Relevant Legislation*

61. ABR s. 31.1(1) A business operator engaged in automotive sales must disclose the following information in accordance with subsection (2), on the basis of information the business operator knew or ought to have known:
- (g) whether the vehicle has, at any time, been assigned a status in one of the following categories under the *Vehicle Inspection Regulation* (AR 211/2006) or an equivalent status under the laws of another jurisdiction: (i) salvage motor vehicle; and

(h) whether the vehicle has been damaged in an incident or collision where the total cost of repairs fixing the damage exceeded \$3000 and, if the repairs were carried out by the business operator, the total cost of the repairs;

62. *ABR* s. 31.1(2) The business operator must disclose the information required under subsection (1) in a clear and legible manner: (a) in any online advertisement for the vehicle, (b) on any sales tag affixed to the vehicle, and (c) in writing to the consumer before purchase.

63. *ABR* s. 31.2(1) A business operator engaged in automotive sales must use a bill of sale that includes the following:

(v) any disclosure statement or documentation respecting a vehicle's previous use, history or condition ...;

(w) a declaration that the business operator has disclosed to the consumer the information required under section 31.1.

64. *ABR* s. 31.3 A business operator engaged in automotive sales must not enter into a bill of sale with a consumer unless the business operator has obtained written confirmation from the consumer that the consumer has received the information required under section 31.1.

#### *Director's Evidence*

65. The Board considered all previously mentioned documents and testimony in regards to this issue.

66. [REDACTED] provided the following additional evidence in regard to this issue:

- a. [REDACTED]'s opinion is that the bill of sale did not comply with the *ABR*.
- b. The sections of the *ABR* in question are new legislation as of November 1, 2018.
- c. The bill of sale was deficient in that it has no AMVIC business registration number, no box where consumer identification is written (such as licence or passport number), no disclosure statement on bill of sale, no disclosure statement form accompanying bill of sale that would indicate previous history of vehicle, and no salesperson id number recorded on bill of sale. There is no date recorded on the bill of sale as to when purchase was first initialized. The bill of sale also has to indicate the date the bill of sale was filled out and also when vehicle was actually delivered.
- d. The sections of the *ABR* in question impose positive obligations on a dealership. That was the purpose of the new legislation.
- e. Some dealerships use separate forms for disclosure. There are no forms provided, or required to be used by the Alberta Government in regard to bills of sale.

- f. The Copart bill of sale states that the repair cost for the vehicle would be approximately \$13000.
- g. ■ testified that the section on the bill of sale which states "vehicle had a previous accident and has been recertified" is not sufficient to advise the complainant of the salvage status of the vehicle.
- h. Mr. Ibrahim never told ■ that he advised the complainants of the salvage status of the vehicle. Rather, he told her that he puts pictures of the damaged vehicle in the advertisement.

#### *Arza's Evidence*

67. The Board considered all previously mentioned documents and testimony in regards to this issue.

68. The following additional documents were provided in regard to this issue:

- a. A text document which Mr. Ibrahim claims is the information provided in the Facebook advertisement for the vehicle, including photos of the damaged vehicle.

69. Mr. Ibrahim provided the following additional evidence in regard to this issue:

- a. He posted the Facebook advertisement around June 10, 2019.
- b. He posted the advertisement along with pictures so that potential customers know the vehicle had been in an accident. People tend to look at the pictures and not read the text which also states the vehicle had been in an accident.
- c. The pictures of the vehicle were sourced from the Copart bill of sale.
- d. In cross examination Mr. Ibrahim described the process by which he retains online advertisements, not by screen shot, but by saving their contents in a file on his computer.
- e. In cross examination, Mr. Ibrahim re-affirmed that he has stated in his testimony that he broke even or lost money on the sale of the vehicle. He admitted his cost estimate was based on a quick calculation of costs vs. how much he sold the vehicle for. He agreed it was based on a general feeling he had at the time of the sale. He stated he had done some kind of calculation the week before when someone else had made an offer on the vehicle.
- f. In cross examination, Mr. Ibrahim admitted his cost estimate was only a "rough estimate."

#### *Director's and Arza's Argument*

70. In regard to these breaches, the Director emphasized that the obligations imposed by the ABR are positive duties on Arza. Again, the Director argued that the lack of documentation supports a negative inference.

71. Arza did not directly address these allegations in argument. Arza admitted they did not follow all regulations required by AMVIC.

*Board's Decision*

72. S. 31.1(1)(g) and s. 31.1(2) of the *ABR* require the Director to prove that Arza disclosed, in a clear and legible manner, that the vehicle was "salvage." This must be done on any sales tag affixed to the vehicle, in writing before the purchase, and in any online advertisement.

73. Mr. Ibrahim has provided the Board with a text document that he claims to be the contents of the online advertisement. The Board is prepared to consider this evidence reliable due to its self-incriminating nature, and given Mr. Ibrahim testified under oath that this is the contents of the online advertisement, and described the means by which he retains this information.

74. The online advertisement contents do not mention the word "salvage" whatsoever.

Therefore, the Board finds the evidence establishes, on a balance of probabilities, that Arza breached s. 31.1(1)(g) and s. 31.1(2) of the *ABR*.

75. S. 31.1(1)(h) of the *ABR* requires the Director to prove that Arza disclosed, in a clear and legible manner, if the cost of repairs was more than \$3000, the total cost of the repairs.

76. The Board finds that Mr. Ibrahim was unable to answer the question about the total cost of repairs to the vehicle (including both labour and parts) easily or directly. Mr. Ibrahim was unable to provide an exact amount, and had to be pressed by questions from the Board to come up with an estimate. By the Board's deduction, his estimate of repairs was approximately \$4500. He did not at any point provide any estimate of costs to [REDACTED] during the investigation.

77. The Board also notes that the contents of the online advertisement does not state the cost of repairs whatsoever.

78. Considering all this evidence together, the Board finds that is it more likely than not the cost of repairs exceeded \$3000, and it is more likely than not Arza did not disclose the cost of repairs to the complainant in any way, be it in the advertisement, on any sales tag, or in writing prior to the purchase.

79. Therefore, the Board finds the evidence establishes, on a balance of probabilities, that Arza breached s. 31.1(1)(h) of the *ABR*.
80. S. 31.2(1)(v) of the *ABR* requires the Director to prove that Arza's bill of sale did not include any statement of disclosure or documentation respecting the vehicle's previous use, history or condition.
81. As already reviewed, the Board finds Mr. Ibrahim to not be credible. We also generally accept the evidence provided in the complainant's statement, including the documents that were provided.
82. We note that the bill of sale states that the "inspection report and recertification were given to Buyer." The complainant provided two documents, those being 3 of 4 pages of the Frame King "motor vehicle record of inspection" and a Frame King "Mechanical Fitness Assessment." The Board finds it is more likely than not these were the only documents provided to the complainant by Arza at the time of sale, and are the two documents referred to on the bill of sale. Neither of these documents refer to the previous use, history or condition of the vehicle to any extent.
83. We also note on the bill of sale simply states "vehicle had a previous accident. Recertified." The Board does not find this to be sufficient to satisfy the requirements of s. 31.2(1)(v) in regards to previous use, history or condition. More information is required to be provided to a buyer.
84. Therefore, the Board finds the evidence establishes, on a balance of probabilities, that Arza breached s. 31.2(1)(v) of the *ABR*.
85. S. 31.2(1)(w) and s. 31.3 of the *ABR* require the Director to prove that Arza did not obtain written confirmation that Arza had disclosed the information required under s. 31.1 to the complainant.
86. The documents provided by the complainant in regard to the sale do not contain such a written confirmation. No other documents provided to the Board contain such written confirmation.
87. Therefore, the Board finds the evidence establishes, on a balance of probabilities, that Arza breached s. 31.2(1)(w) and s. 31.3 of the *ABR*.

**Issue 2(c) Does the evidence establish a breach of s. 6(4)(a) of the CPA and s. 12(a) of the ABR?**

*Relevant Legislation*

88. CPA s. 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.
89. ABR s. 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.

*Director's Evidence*

90. The Board considered all previously mentioned documents and testimony in regards to this issue.
91. The following additional documents were provided in regard to this issue:
- a. The witness statement of the complainant. It states:
    - i. When the complainant's husband attended Arza's place of business to pay for and pick up the vehicle, he asked Mr. Ibrahim if the car had been involved in previous accidents. Mr. Ibrahim replied that it had, but it was very minor. Mr. Ibrahim brushed his hand over the vehicle door and stated it was cosmetic damage only to the door.

92. ■ provided the following additional evidence in regard to this issue:
- a. ■ found it very concerning that Mr. Ibrahim would have referred to the accident the vehicle was involved in as "minor". From the Copart bill of sale and Performance Auto inspection, it was clearly not minor.

*Arza's Evidence*

93. The Board considered all previously mentioned documents and testimony in regards to this issue.
94. Mr. Ibrahim provided the following additional evidence in regard to this issue:
- a. In response to Board questions, Mr. Ibrahim stated that he did not consider the accident the vehicle was involved in to be minor. He stated, "Absolutely not."



*Director's and Arza's Argument*

95. Neither party provided any additional argument in regard to these breaches.

*Board's Decision*

96. S. 6(4)(a) of the *CPA* and s. 12(a) of the *ABR* require the Director to prove that Arza did or said anything that might reasonably deceive or mislead the complainant.

97. As already reviewed, the Board finds Mr. Ibrahim to not be credible. We also generally accept the evidence provided in the complainant's statement.

98. As such, the Board finds that Mr. Ibrahim misrepresented the extent of the accident the vehicle was involved in, and the extent of the previous damage, to the complainant and her husband.

99. Therefore, the Board finds the evidence establishes, on a balance of probabilities, that Arza breached s. 6(4)(a) of the *CPA* and s. 12(a) of the *ABR*.

**Issue (2d) Does the evidence establish a breach of s. 132 of the *CPA* and s. 9 of the *ABR*?**

*Relevant Legislation*

100. *CPA* s. 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.

101. *ABR* s. 9 In addition to the requirement to create and maintain financial records in accordance with section 132(1) of the [*CPA*], 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.

#### *Director's Evidence*

102. The Board considered all previously mentioned documents and testimony in regards to this issue.
103. The following additional document was provided in regard to this issue:
- a. An August 30, 2019 letter from AMVIC consumer services officer demanding that Arza produce all dealer records and documents relevant to the complaint.
104. [REDACTED] provided the following additional evidence in regard to this issue:
- a. [REDACTED] testified that, in addition to the August 30, 2019 letter which Mr. Ibrahim failed to respond to, she made demands for all of Arza's relevant records as well.
  - b. [REDACTED] testified she was never able to obtain any documentation in regard to the repair to the vehicle. In her opinion, these documents do not exist.
  - c. [REDACTED] stated in her opinion, all repair documents are required to be kept.
  - d. [REDACTED] testified that, even if no invoice was created for a particular transaction, other internal records would exist. For example, there would inventory records even if a licensed business simply replaced a headlight without the assistance of a mechanic. This is especially the case for something as significant as mechanical repairs to vehicles, such as brakes, airbags, frame or structural damage. These documents are especially important to AMVIC as they relate to the safety of the vehicles on the road.

#### *Arza's Evidence*

105. The Board considered all previously mentioned documents and testimony in regards to this issue.
106. Mr. Ibrahim provided the following additional evidence in regard to this issue:
- a. He provided all documents to [REDACTED] that he had in his possession while he was out of the country.
  - b. He testified he could not remember who repaired the vehicle after it failed inspection.
  - c. He testified that he would not have approved repairs to the vehicle without an estimate first.
  - d. During cross examination, Mr. Ibrahim admitted that the estimate he received from Ali Q in this case was verbal only. He paid Ali Q in cash. Ali Q did not provide a receipt.
  - e. During cross examination, he testified that he would use a mobile mechanic to strip parts from certain vehicles he had on his lot. He probably used a mobile mechanic to strip parts to repair the vehicle. He would have paid by credit card or cash. He was not provided with an invoice for this work.

- f. During cross examination, he testified that to move salvage vehicles around, he would use tow companies. They would typically cost \$50 and provide no receipt.
- g. During cross examination he admitted that many of his deals are cash purchases, and he usually has a lot of cash on hand. If he did not have enough cash, he could take up to \$10,000 out of an ATM.
- h. During cross examination, the Director asked Mr. Ibrahim stated he knows how much profit his business makes because he has bills of sale to show his sales, and receipts for the costs.
- i. During cross examination, Mr. Ibrahim admitted he did not ask his accountant for any records in regard to this transaction because ■ asked for documents in 2019 and he would not have provided those documents to his accountant at the time the demands were made. The accountant would not have those documents until 2020.

#### *Director's and Arza's Argument*

107. The Director argues that while recordkeeping sounds pedestrian, Arza's breach of these sections are the very reason why the CPA and ABR require recordkeeping. The reason is not to help any particular business operator with taxes, but rather the reason is to protect consumers. This case is an example where Arza has failed to protect a consumer.
108. Arza admits in argument that they have failed to diligently keep record and receipts. Arza argues this was not done unintentionally, and they had no reason to mislead or take advantage of the complainant.

#### *Board's Decision*

109. S. 9 of the ABR states that "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."
110. Modern principles of statutory interpretation require that words of any legislation are not simply read literally but "in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament" (*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para. 117). Sections of legislation must "be construed as being remedial, and shall be given the fair, large and liberal construction and interpretation that best ensures the attainment of its objects" (*Interpretation Act*, RSA 2000, c I-8 at s. 10).

111. In regard to s. 9 of the *ABR*, while the strict wording of the section only refers to records that are "created or received," the Board finds that the purpose of this section within its legislative context is to ensure adequate record keeping of activities such that AMVIC is able to properly regulate their members and protect the public. Therefore, s. 9 goes beyond simply records that are "created or received" and includes records that reasonably ought to be created or received. An absurdity is created if an AMVIC regulated business is permitted to comply with the legislation by ensuring that no records of their business dealings are created or received.
112. The Board finds that the evidence from both parties is consistent, and clearly Arza has failed to maintain proper receipts and records in regard to the sale and repair of the vehicle. Arza operates its business in a manner where issues such as the sale of a dangerous non-roadworthy vehicle cannot be properly investigated. Arza runs a mostly cash business, and the majority of the suppliers they choose to employ do not provide any invoices. This violates the obligations created by s. 9 of the *ABR*.
113. Therefore, the Board finds the evidence establishes, on a balance of probabilities, that Arza breached s. 9 of the *ABR*.
114. S. 132(1) of the *CPA* requires that the Director prove that Arza 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.
115. In cross examination, Mr. Ibrahim admitted that he is able to determine how much profit Arza earns for tax purposes by using bills of sale to show earnings, and receipts to show costs. However, Arza also provided evidence that they do not have complete financial receipts for the repair, inspection, and sale of the vehicle in this case. The Board is prepared to consider this evidence reliable due to its self-incriminating nature, and due to its consistency with the rest of the evidence including Arza's failure to produce meaningful receipts to ■■■.
116. Considering the totality of the evidence, the Board finds it is more likely than not that Arza does not have complete and accurate financial record of its operations in Alberta.

Therefore, the Board finds the evidence establishes, on a balance of probabilities, that Arza breached s. 132(1) of the CPA.

117. S. 132(2) of the CPA requires the Director to prove that a demand was made to Arza to inspect their financial records at a time and place specified by an inspector, and that Arza failed to comply with that demand.

118. The Board finds that the August 30, 2020 letter from AMVIC to Arza contains such a demand. The Board further finds that Arza failed to comply with that demand by failing to respond. The fact that Mr. Ibrahim was out of the country at the time of the demand does not absolve Arza of their obligations under the CPA.

119. Therefore, the Board finds the evidence establishes, on a balance of probabilities, that Arza breached s. 132(2) of the CPA.

**Issue (2e) Does the evidence establish a breach of s. 134(1)(a) and s.134(2) of the CPA?**

*Relevant Legislation*

120. CPA s. 134(1) Every licensee must notify the Director in writing within 15 days of (a) a change in the address of the licensee's business office ... (2) A person issued a licence who ceases to carry on the activities for which the licence was issued must notify the Director within 15 days of the cessation of the activities and return the licence with the notification.

*Director's Evidence*

121. The Board considered all previously mentioned documents and testimony in regards to this issue.

122. The following additional documents were provided in regard to this issue:

- a. AMVIC licence and registration certificate for Arza, for the period of February 23, 2019 to March 31, 2020, permitting Arza to sell used vehicles.
- b. AMVIC licence and registration certificate for Mr. Ibrahim, for the period of February 23, 2019 to March 31, 2020, permitting Mr. Ibrahim to be an automotive salesperson.
- c. A printout of AMVIC's contact information for Arza, showing a business address of 1220 Meridian Road NE, Calgary.
- d. An "application report", written by [REDACTED] which states, "The Applicant's business licence lapsed on March 31, 2020 as an alert has been placed on the file."

123. [REDACTED] provided the following additional evidence in regard to this issue:
- When [REDACTED] attended Arza's business premises on November 7, 2019, there was an employee taking care of the business though not selling vehicles.
  - On June 2, 2020, [REDACTED] drove by the business address of Arza. She saw that the lot had been cleared out, and there were "For Rent" signs on the lot.
  - During cross examination, [REDACTED] admitted that she had placed an alert on Arza's licence, which would allow the licensing bureau to suspend the licence until the hearing pending her Application Report (dated May 11, 2019 where she recommended cancelation), should the license be renewed on March 31, 2020. The alert was placed based on Mr. Ibrahim being out of the country, and his admission to [REDACTED] that he had performed some of the repairs on the vehicle.

*Arza's Evidence*

124. The Board considered all previously mentioned documents and testimony in regards to this issue.
125. The following additional documents were provided in regard to this issue:
- An MBNA bill showing he had paid AMVIC two licensing fees March 25, 2020, those being for renewal Arza and Mr. Ibrahim's licences.
126. Mr. Ibrahim provided the following additional evidence in regard to this issue:
- He testified he tried to renew his licences on March 25, 2020 but was advised by licensing that his licence was "on hold" due to the alert put on his licence by [REDACTED]
  - He explained that the repairs he had done to the vehicle was changing a bulb and tightening a bolt.
  - AMVIC did not renew his licences but took his money, as shown on the MBNA bill.
  - He stated that in April he was not able to keep up with rent shortly after his licence not being renewed. The April rent cheque was returned NSF. The landlord provided him one extra month, and in May the landlord took possession of the premises.
  - He stated when he was out of the country, he had hired a person to take care of his shop, but to make no sales. They were employed until April 2020. He subsequently lost contact with them.
  - He stated he had intended to return and continue his business operations.

*Director's and Arza's Argument*

127. The Director argued that Arza paid for and renewed their licence prior to March 31, 2020. The Director drew the Board's attention to the application report which stated the licence had "lapsed" March 31, 2020 as an alert had been placed on the file, the fact that he

had paid his fees, and the Director's decision which states, as of June 16, 2020, he was licenced. The Director could not have cancelled his licence if he was not licenced.

128. Arza argued that, after his licence was suspended March 31, 2020, he was unable to access his login on-line and so could not update his information. He argued that as of March 2020 he was trying to renew and continue on in his place of business, as evidenced by the fact he had an employee taking care of the business premises. He argued that he did not voluntarily close his doors but for the actions of his landlord.

#### *Board's Decision*

129. S. 134(1) of the CPA requires the Director to prove that Arza failed to advise the Director in writing within 15 days of a change of business address.
130. While the Board does not consider the Director's decision to be evidence of anything other than the fact that the Director made a decision, the Board finds the evidence otherwise is largely consistent between the parties. The Board finds that it is more likely than not Arza paid for and then renewed their licence on March 31, 2020, however the licence was suspended by the licensing bureau due to the alert placed on the licence by [REDACTED]. That the licence was suspended does not absolve Arza of complying with the requirements of the CPA. The Board finds that Arza was unable to continue renting its business premises by, at the latest, May 1, 2020. The Board finds that Arza did not subsequently update their business address in writing at any point between May 1 and June 16, 2020, when the Director cancelled their licence. This is more than 15 days.
131. The Board does not accept that since Mr. Ibrahim was unable to access AMVIC on-line, he was unable to notify the Director of a change in his business address. He could have emailed the Director via licensing, written them a letter and faxed it to them, or sent a letter via post mail.
132. Therefore, the Board finds the evidence establishes, on a balance of probabilities, that Arza breached s. 134(1) of the CPA.
133. S. 134(2) of the CPA requires the Director to prove that Arza had ceased to carry on the activities for which their licence was issued, and then failed to notify the Director they must within 15 days of the cessation of the activities and return the licence.

134. The Board finds that the evidence does not establish that Arza intentionally or voluntarily ceased its business activities. This appears to be as a result of a licence suspension caused by the alert that [REDACTED] placed on the licence and not a result of the landlord's actions. As such, the Board dismisses the Director's allegations that Arza breached s. 134(2) of the CPA.

**Issue (3) Given the breaches established, should the Board confirm, vary or quash the Director's decision to cancel the business licence of Arza?**

*Director's and Arza's Argument*

135. The Director argues that the Directors' decision to cancel Arza's licence was an appropriate response to the breaches he has committed. Though Arza has no discipline history, the fact that an unsafe vehicle ended up on the road is the most egregious outcome that the CPA was designed to prevent. Consumers need to have confidence that they are purchasing what they think they are purchasing, and not something else entirely. The Director argued that cancellation was not overkill in this instance. The Director argued that Mr. Ibrahim's lack of participation in the administrative hearing process which resulted in the initial licence cancellation decision was a factor to consider. They argued Arza has suffered no practical consequence for his actions until his licence was cancelled. Cancellation is effectively a twelve-month prohibition from being in the industry. Alternatively, the Director suggested the Board could consider imposing a licence condition which prohibits Arza from trading in salvage or rebuilt vehicles.

136. In response to questioning from the Board, the Director argued that the Board can use the factors found in the *Administrative Penalties (Consumer Protection Act) Regulation*, Alta Reg 135/2013 at s. 2(2) when considering an appropriate sanction, whether that sanction is cancellation, suspension, licence conditions, or administrative penalties.

137. Arza argued that it was unfair to cancel his licence. Though there were clear recordkeeping problems, the vehicle was put through proper inspection, and Arza otherwise did everything as they were supposed to in regards to the sale. Arza argued they could not find anything on the AMVIC website in regards to sanction precedents where there was a failure to keep proper records. Most of the precedents were individuals selling



vehicles without a proper licence, and they were given a fine or a warning. Arza argued they had paid heavily due to this investigation – even if the licence was restored, the business is lost and has already had to close its doors. Arza asked the Board to consider that their licence was suspended for 2.5 months prior to the cancellation.

#### *Board's Decision*

138. The Board accepts the Director's suggestion that the factors to consider in regard to sanction are found in *Administrative Penalties (Consumer Protection Act) Regulation*, Alta Reg 135/2013 at s. 2(2). Those factors are:

- a. the seriousness of the contravention;
- b. the degree of wilfulness or negligence in the contravention;
- c. the impact on any person adversely affected by the contravention;
- d. whether or not the person ... has a history of non-compliance;
- e. whether or not there were any mitigating factors relating to the contravention;
- f. whether or not the person ... has derived any economic benefit from the contravention;
- g. any other factors that, in the opinion of the [Board], are relevant.

#### *The Seriousness of the contravention*

139. The Board finds that these breaches are extremely serious. In particular, Arza was grossly negligent in the keeping of records to the point where it subverted AMVIC's ability to fully investigate how an unsafe vehicle came to be driven on the road. Without proper records, it became impossible to determine precisely who the bad actors were in this situation. Arza's noncompliance with proper record keeping subverted AMVIC's ability to protect the public, and defeated protections that the CPA was created for.

140. The Board also finds the failure to make proper disclosures to the complainant, the misrepresentation to the complainant, and the overall lack of cooperation during the investigation of these breaches to increase the seriousness overall.

141. This factor is highly aggravating towards sanction.

*The Degree or negligence in the contravention*

142. The Board finds that Arza was grossly negligent in regards to the most serious of breaches, the failure to keep proper records. The Board finds the other breaches were also based in negligence, and Arza's general practise to cut corners when selling a vehicle.

143. This factor is highly aggravating towards sanction.

*The Impact on any person adversely affected by the contravention*

144. The Board finds that the impact on the complainant was significant. The complainant had to go through the ordeal associated with making a complaint, not being able to drive the vehicle for a time, and spending her time and money having the car inspected. This is balanced against the mitigating effect of Arza voluntarily compensating the complainant for the sale price of the vehicle, and the costs associated with inspecting the vehicle.

145. This factor is aggravating towards sanction.

*Whether or not the person ... has a history of non-compliance*

146. Arza does not have a history of non-compliance.

147. This factor mitigates sanction.

*Whether or not there were any mitigating factors relating to the contravention*

148. There are no other mitigating factors to consider.

*Whether or not the person ... has derived any economic benefit from the contravention*

149. Since Arza has voluntarily bought the car back from the complainant, they have not derived any economic benefit from the breaches. However, the Board finds it is significant that Arza was attempting to derive economic benefit from these contraventions, be it from the sale of the vehicle or the tax benefit of running a cash business.

150. This factor is aggravating towards sanction.

*Any other Factors any other factors that, in the opinion of the [Board], are relevant*

151. The Board finds that there is a need for considerable specific deterrence in this case.

Throughout the hearing, Arza did not demonstrate an understanding of the significance of

their misconduct or how grossly negligently they were running their business. Arza did not demonstrate understanding that failure to keep proper records effectively renders them ungovernable, and therefore failure to keep proper records is totally unacceptable. The sanction must be significant enough to deter Arza from continuing this misconduct in the future.

152. The Board finds that there is a need for general deterrence as well, such that other members of the industry understand that failure to keep proper records is an extremely serious contravention of the act, and a business practise that puts the public at risk. The sanction must be sufficient to communicate this seriousness to the industry at large.
153. The Board finds that the public perception of AMVIC's ability to protect them and govern its members must be considered regarding this sanction.
154. The Board finds that all of these factors – specific deterrence, general deterrence and the reputation of the industry - are aggravating towards sanction.
155. Ideally, at this point the Board would also consider AMVIC precedents to create a range of sanction typical for this type of misconduct. However, no precedents were provided to the Board. We were further unable to find any sufficiently similar precedents that would be of assistance.

#### *Conclusion on Sanction*

156. In consideration of the factors, most of which are aggravating, the Board finds the just and appropriate sanction in this case is licence cancellation. The extremely aggravating nature of the breaches and the gross negligence demonstrated in regard to the failure to keep records within the context of a non-roadworthy vehicle being sold to the public pushes the appropriate sanction past the threshold where licence cancellation is appropriate. The Board finds that the remaining aggravating factors only serve to reinforce the appropriateness of the licence cancellation. The Board finds that the mitigating factor of this being a "first offence" is insufficient to mitigate sanction to something less than licence cancellation.

## **CONCLUSION AND ORDER**

157. In accordance with the reasons above, the Appeal Board confirms the Director's June 16, 2020 decision to cancel the Provincial Automotive Business Licence of Arza Ltd.
158. No decision is made as to costs.

ISSUED AND DATED at the City of Calgary in the Province of Alberta this 5 day of April, 2021

"original signed by"

---

Christopher Davison, Chair

"original signed by"

---

Bellanne Meltzer Toren, Member

"original signed by"

~~Joshua~~ Selby, Member