

IN THE MATTER OF AN APPEAL BY
SURAFEL TUFA
OF THE DECISION BY
THE ALBERTA MOTOR VEHICLE INDUSTRY COUNCIL (“AMVIC”)
DATED MAY 17, 2021
TO REFUSE THE REGISTRATION OF THE APPELLANT
AS AN AUTOMOTIVE SALESPERSON UNDER THE
CONSUMER PROTECTION ACT, RSA 2000, C-26.3
AND THE *AUTOMOTIVE BUSINESS REGULATION*, REG. 192/99, AS AMENDED

REASONS FOR DECISION OF THE APPEAL COMMITTEE

Committee Chair: Erol Yersel
Members: Shaun Henderson
Michael Samson

Appearances: Surafel Tufa, Appellant

Paula Hale (Shores Jardine LLP) counsel for AMVIC
Yoneke A [REDACTED], AMVIC Manager of Licensing

Mylène Tiessen (Peacock Linder Halt & Mack LLP) counsel for the Appeal Committee

Appeal Hearing: October 7, 2021, by videoconference

INTRODUCTION

This is an appeal of the May 17, 2021, decision of the Director of Fair Trading (as delegated) (the “Registrar”) to refuse Mr. Tufa’s registration as an automotive salesperson pursuant to sections 104 and 127 of the *Consumer Protection Act* (the “CPA”) (the “Registrar’s Decision”).

LEGISLATIVE AUTHORITY

The CPA governs the registration of salespeople in Alberta. The Director of Fair Trading has delegated its authority relative to the automotive industry in Alberta to AMVIC, including automotive salesperson registrations. Section 16 of the *Automotive Business Regulation* (the “ABR”) requires that salespeople be registered before acting on behalf of a business operator.

Section 127 of the CPA gives the Registrar authority to refuse to issue a licence for any of the reasons enumerated in that section.

While section 127 specifically refers to business licences, section 18 of the ABR provides that section 127 applies, with the necessary changes, to the registration of salespersons.

Section 22 of the ABR permits a person, whose application for registration has been refused, to appeal that decision in accordance with the process established by the Registrar. That process is set out in the AMVIC Salesperson Appeal Committee Policy (the "Appeal Policy").

Pursuant to section 3.2(2)(m) of the Appeal Policy, the Appeal Committee is required to determine if the Registrar's Decision is consistent with the provisions of the CPA, the ABR, and the Bylaws and policies of AMVIC. Section 179(6) of the CPA gives the Appeal Committee authority to confirm, vary or quash the Registrar's Decision.

BACKGROUND

On March 24, 2021, Mr. Tufa submitted an application for an automotive salesperson registration. That application was referred to an administrative review which was held May 17, 2021. Following that review, the Registrar refused Mr. Tufa's application for various reasons including that, Mr. Tufa had two unresolved *Criminal Code* charges before the Court and given Mr. Tufa's failure, in the Registrar's view, to disclose the second of the two charges at the time of making his application for registration. The Registrar noted that Mr. Tufa's next court date, according to Justice Online Information Network, was scheduled for trial on [REDACTED]

Mr. Tufa submitted a notice of appeal of the Registrar's Decision. That notice of appeal was received by AMVIC on May 31, 2021. The appeal was originally scheduled to be heard July 15, 2021. The hearing was adjourned, at Mr. Tufa's request, and rescheduled for October 7, 2021.

MATERIALS PROVIDED TO THE APPEAL COMMITTEE

At the appeal hearing, the Appeal Committee was provided with a copy of the Registrar's Decision and correspondence pertaining to that administrative hearing and the appeal. The Appeal Committee was also provided with the following:

1. Correspondence dated October 6, 2021, from Ector Law (Blair Ector) addressed to AMVIC;
2. A document entitled "Criminal Record Summary" (undated); and
3. Correspondence dated October 7, 2021, from counsel for AMVIC addressed to the Appeal Committee.

According to the October 6th letter from Ector Law, Mr. Ector was counsel to Mr. Tufa concerning the two criminal charges. Mr. Ector advises that in the case of one of the charges, Mr. Tufa received an absolute discharge and in the case of the other, it was withdrawn by the Crown.

The October 7th letter from counsel for AMVIC states, in part, that after reviewing Mr. Ector's letter with its client, AMVIC no longer opposes Mr. Tufa's registration as a salesperson based on the understanding that:

- Mr. Tufa has received an absolute discharge with respect to the criminal charges he was facing;

- He has no other charges pending; and
- He has no other criminal convictions.

The letter goes on to state that in “AMVIC’s view, the Panel should consider this new evidence, which was not available to the Registrar at the time of his decision.”

ADDITIONAL SUBMISSIONS TO THE APPEAL COMMITTEE

With respect to the two criminal charges, Mr. Tufa explained that in the case of the one he pleaded guilty to a lesser charge for which he was given an absolute discharge by the Judge.

Counsel for AMVIC also advised the Appeal Committee that in the case of administrative reviews in these types of situations it is not uncommon for there to be an issue regarding a failure by the applicant to disclose certain facts which, in turn, may result in AMVIC having concerns. In this case, however, Mr. Tufa was forthcoming in the course of the application process and AMVIC had no concerns with respect to any failure to disclose information. Mr. Tufa explained that in the case of the second criminal charge, he understood that it had been dealt with and removed from his record and therefore had not initially disclosed it on his application. His intention was not to hide any information from AMVIC and he made every effort to be truthful with AMVIC from the outset.

DECISION

It is the unanimous decision of this Appeal Committee, based on the new information arising since the Registrar’s Decision, that the Registrar’s Decision be quashed and Mr. Tufa’s application for automotive salesperson registration may proceed.

Dated this 12 day of October 2021.

"original signed by"

Erol Yersel

Chair – AMVIC Salesperson Appeal Committee