

April 8, 2022

Administrative Review – 22-03-007

Served via email: [REDACTED]

Administrative Penalty

GUARANTEED AUTO CARE LTD.
919 46 AVENUE SE
CALGARY, AB
T2G 2A5

Attention: Conrado Lorenzo

Dear Conrado Lorenzo:

Re: Guaranteed Auto Care Ltd. – Provincial Automotive Business Licence No. B2001368

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 information exchanged during an administrative review held via teleconference call on April 5, 2022.

Licensee Status

Guaranteed Auto Care Ltd. (the “Supplier”) holds an AMVIC business licence and carries on the business activities of used sales, garage and service station in the Province of Alberta.

History

The Supplier has been in business since July 2014 and has no previous enforcement history with the regulator.

Summary of Investigation

Case File 22-03-049

1. On Jan. 21, 2022 an AMVIC investigator attended the business address of the Supplier and advised the Mr. Lorenzo, one of the owners and directors, to cease operating as the AMVIC business licence

had expired on Aug. 31, 2021. Mr. Lorenzo subsequently informed the investigator that he found six emails from AMVIC's licensing department notifying him to renew his business licence and one email after it had expired. Mr. Lorenzo stated that his assistant failed to notify him of the emails and he did not realize his AMVIC business licence had expired. Mr. Lorenzo stated he now has a reminder in his own calendar to ensure this does not happen again.

2. During a site visit on Jan. 28, 2022, the AMVIC investigator found the Supplier was open and operating despite the AMVIC business licence still being at an expired status. Five vehicles were noted in the Supplier's bay including one vehicle which appeared to be having autobody work done for a damaged roof. The Supplier is not licensed for autobody activities.
3. Mr. Lorenzo told the investigator he thought he was allowed to continue operating as he had completed the renewal and was waiting for AMVIC to process his renewal application. He stated he did have signage posted that his business was temporarily closed, however took it down in the morning as he had completed his renewal. Mr. Lorenzo denied any autobody repair being completed advising they were just replacing a sunroof part.
4. The AMVIC investigator took photos of the vehicles inside the bay and forwarded them to a [REDACTED] branch. Based on the pictures that were provided it was the [REDACTED] opinion that autobody work was being performed.
5. The Supplier submitted written representations to the Director on March 16, 2022. In Mr. Lorenzo's representations, he indicated they were not doing any autobody repairs in their shop. The roof repair conducted was a mechanical repair to a sunroof in which the Supplier completely removed the retractable sunroof assembly but no collision, dent, welding, sanding or painting work was being conducted.
6. During the administrative review, the Director inquired with Mr. Lorenzo as to why his Facebook advertisement lists that his business conducts autobody repair services when he is not licensed for that business activity. Mr. Lorenzo explained that in 2017 the business plan was to incorporate autobody repair however, it became evident that it was cost prohibitive and this business activity was not pursued. Mr. Lorenzo apologized for the breaches and wants to ensure his business is compliant with the legislation.
7. The Supplier indicated they have already taken steps to change their signage and advertising with respect to the advertisements stating they are conducting autobody repair and are committed to making the necessary changes to their online advertising to conform to the legislative requirements and were cooperative with the AMVIC investigator.
8. The Supplier accepted responsibility for their breaches and asked for leniency in response to the discussion of the possibility of an Administrative Penalty being imposed.

Legislation

Automotive Business Regulation

New classes of licence

Section 3

(7) A person who holds an automotive business licence is not authorized to carry on any class or classes of activities that are not specified on the licence.

Consumer Protection Act

Licence required - designated businesses

Section 104

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

Carrying on business

Section 169

Evidence that

(b) a person set out in a letter, advertisement, card or other document issued by or under the authority of the person that the person is carrying on a business or activity is proof, in the absence of evidence to the contrary, that the person was carrying on that business or activity.

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.

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 an AMVIC investigation into unlicensed business activity and other potential breaches of the legislation, AMVIC case file no. 22-03-049.

Unlicensed business (CPA Section 104(1)) / Carry on unauthorized business activity (ABR Section 3(7))

The Supplier allowed their AMVIC business licence to expire in August 2021 and continued to operate until late January 2022. Further, despite being told to cease all business activities on Jan. 21, 2022 the Supplier was found to be operating on Jan. 28, 2022. The Supplier's new business licence was not issued until Feb. 7, 2022 almost six months from the date their business licence expired. Mr. Lorenzo admitted his business received six emails from AMVIC's licensing department notifying him to renew his business licence and one email after it had expired. Although the failure to renew was unintentional on the Supplier's part, the Supplier did continue to operate even after directed to cease operating until licensed with AMVIC and has therefore contravened Section 104(1) of the CPA.

During the site visit on Jan. 28, 2022, the AMVIC investigator found the Supplier to be, what she believed, conducting unlicensed autobody repair work. Mr. Lorenzo contends that his business was not conducting autobody repair activity yet the Supplier's Facebook page clearly advertises that they do conduct autobody repair and there is no evidence to the contrary (Section 169(b) of the CPA). As a result, on a balance of probabilities the Director finds that the Supplier has also breached Section 3(7) of the ABR.

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 the CPA. When determining an appropriate enforcement measure, the Director will consider several factors before making a decision to ensure what level of enforcement is appropriate to the contravention.

At the administrative review, the Supplier took responsibility for the legislative breaches and has already made changes to their signage and advertising. Further, the Supplier has been licensed with AMVIC since 2014 and has no previous history of enforcement action. The Director considered the representations from the Supplier regarding their position on an appropriate Administrative Penalty. An Administrative Penalty must be sufficient in that the Supplier and other Suppliers do not view the amount of the penalty as a cost of doing business that is preferable to following the law.

There exists an onus on the Supplier to do their due diligence and ensure they are complying with the law. As stated in the Supreme Court of British Columbia in *Windmill Auto Sales & Detailing Ltd. v. Registrar of Motor Dealers, 2014 BCSC 903* addressed the issue of the onus and responsibility the Supplier has when operating within regulated industry. The court at paragraph 59 stated:

In my view, it is incumbent upon a party that operates within a regulated industry to develop at least a basic understanding of the regulatory regime, including its obligations under the regime, as well as the obligations, and the authority, of the regulator.

Action

In accordance with Section 158.1(a) of the CPA and based on the above facts, I am requiring that Guaranteed Auto Care Ltd. pay an Administrative Penalty of **\$400**. This is based on my opinion that Guaranteed Auto Care Ltd. contravened Section 104(1) of the CPA and Section 3(7) of the ABR.

Taking into consideration all the representations made by the Supplier and the representations made by AMVIC's investigations department, the amount of the Administrative Penalty is **\$400**.

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 mitigating factor of the efforts made by the Supplier to achieve regulatory compliance in the future;
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 \$400.

Pursuant to Section 3 of the Administrative Penalties (*Consumer Protection Act*) Regulation, you are required to submit payment within **thirty (30) days** of the date of service of this notice. Failure to pay the Administrative Penalty will result in a review of the licence status. Payment may be made payable to the **"Government of Alberta" and sent to AMVIC** at:

Suite 303, 9945 – 50th Street
Edmonton, AB T6A 0L4.

If payment has not been received in this time period, the Notice may be filed in the Court of Queen's Bench and enforced as a judgement of that Court pursuant to Section 158.4 of the CPA and further disciplinary action will be considered.

Section 179 of the CPA allows a person who has been served a notice of administrative penalty to appeal the penalty. To appeal the penalty, the person must serve the Minister of Service Alberta

Minister of Service Alberta
103 Legislature Building

10800 - 97 Avenue NW
Edmonton, AB
Canada T5K 2B6

with a notice of appeal within **thirty (30) days** after receiving the notice of Administrative Penalty. The appeal notice must contain your name, your address for service, details of the decision being appealed and your reasons for appealing.

Pursuant to Section 180(4) of the CPA, service of a notice of appeal operates to stay the Administrative Penalty until the appeal board renders its decision on the appeal or the appeal is withdrawn.

Under Section 4 of the Administrative Penalties (*Consumer Protection Act*) Regulation, the fee for appealing an Administrative Penalty is the lesser of \$1,000 or half the amount of the penalty. As such, the fee for an appeal of this Administrative Penalty, should you choose to file one, would be **\$200**.

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