

IN THE MATTER OF AN APPEAL BY
SIRACK TESFAI
OF THE DECISION BY
THE ALBERTA MOTOR VEHICLE INDUSTRY COUNCIL (“AMVIC”)
DATED JUNE 8, 2022
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: Beverley Bell
Paul Williams

Appearances: Sirack Tesfai, 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: August 24, 2022 - by videoconference

INTRODUCTION

This is an appeal of the June 8, 2022, decision of the Director of Fair Trading (as delegated) (the “Director”) to refuse Sirack Tesfai’s reinstatement application for registration as an automotive salesperson pursuant to sections 104 and 127 of the *Consumer Protection Act* (the “CPA”), specifically sections 127(b)(iii) and 127(c) (the “Director’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 Director 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 Director. 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 Director’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 Director’s Decision.

Sections 104, 127(b) (iii) and 127(c) of the CPA provide as follows:

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.

(2) If required to do so by the applicable regulation, a person who engages in a designated business at more than one location must hold a separate licence issued under this Act for each location that authorizes the person to engage in that business.

127 The Director may refuse to issue or renew a licence, may cancel or suspend a licence and may impose terms and conditions on a licence for the following reasons:

(b) the applicant or licensee or any of its officers or employees

(iii) furnishes false information or misrepresents any fact or circumstance to an inspector or to the Director.

(c) in the opinion of the Director, it is in the public interest to do so.

BACKGROUND

Mr. Tesfai was granted a salesperson registration on July 5, 2018, which expired July 31, 2021. On March 31, 2022, AMVIC received a reinstatement application for a salesperson registration from Mr. Tesfai. An administrative review with respect to that reinstatement application was requested by AMVIC on the basis of Mr. Tesfai’s current alleged [REDACTED] which caused AMVIC concern “[REDACTED]” The administrative review was held May 31, 2022. Mr. Tesfai was given notice of the administrative review. He attended the review and made submissions. Following that review, the Director issued a decision dated June 8, 2022, refusing Mr. Tesfai’s application on the basis that:

1. It was not in the public interest to do so given the recent and serious [REDACTED] [REDACTED] (s. 127(c) of the CPA); and
2. He failed to disclose the true nature and the [REDACTED] and did not disclose that he is currently subject to [REDACTED] (s. 127(b) (iii) of the CPA).

In addition, the Director was not persuaded that conditions on Mr. Tesfai's registration could adequately protect the public.

Mr. Tesfai appealed the Director's Decision on June 13, 2022. In his notice of appeal Mr. Tesfai stated that the reasons for the appeal were:

Sales has been my livelihood [sic] since Highschool [sic] Graduation. Only way I know how to support my family in and outside of Canada. My entire family depends on me for support, I've also included reference letters who can attest on my behalf. One mistake does not define a man.

In the accompanying email addressed to the Director, Mr. Tesfai also states, in part:

I wanted to assure you it was never my intention to falsify nor furnish information on my application. I initially shared my pending [REDACTED] on my application even though it wasn't clear on whether it applied to pending [REDACTED] or actual [REDACTED] which I don't have. Thus causing confusion on whether what information I should or should not submit. I was happy to address this over the phone with you, since it was more straight forward, clear and descriptive.

EVIDENCE BEFORE THE APPEAL COMMITTEE

The Appeal Committee was provided with the following documents as part of the appeal hearing:

1. Materials prepared by AMVIC including:

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| TAB 1 | May 17, 2022 - Letter from the Director to Mr. Tesfai regarding notice of proposed administrative action

June 8, 2022 – Director's Decision

June 13, 2022 – Email from Mr. Tesfai with attached Notice of Appeal and reference letters

June 14, 2022 - Letter from the Director to Mr. Tesfai regarding the Notice of Appeal |
| TAB 2 | June 23, 2022 - Letter from AMVIC to Mr. Tesfai confirming appeal date and particulars

June 23, 2022 - AMVIC letter to Appeal Committee Chair

June 23, 2022 - AMVIC letters to Appeal Committee Members |
| TAB 3 | May 11, 2022 - Application Report - Licensing

May 23, 2022 – Letter from Mr. Tesfai to the Director |

May 30, 2022 – Letter from Slaferek Law to the Director

- TAB 4 Portions of the CPA
- TAB 5 Portions of the ABR
- TAB 6 AMVIC – Salesperson Appeal Committee Policy

2. The following additional document was entered as an exhibit, without objection, during the appeal hearing:

- (a) Document entitled “Criminal Record Summary” (1 page)

The parties were given an opportunity to make opening and closing statements and to question the witnesses. The Appeal Committee heard from the following witnesses:

- (a) Yoneke A [REDACTED], AMVIC Manager of Licensing; and
- (b) The appellant, Mr. Tesfai.

ORAL PRESENTATION TO THE APPEAL COMMITTEE

AMVIC Submissions

Counsel for AMVIC opened by advising that there are no real facts in dispute. The issue is Mr. Tesfai’s current outstanding [REDACTED]. AMVIC’s view is that these [REDACTED] are serious and it is inappropriate to grant Mr. Tesfai a salesperson registration.

Ms. A [REDACTED] was AMVIC’s sole witness. She is the AMVIC Manager of Licensing. She has held that position for approximately three years. She has been with AMVIC for approximately 8.5 years and throughout that time worked in licencing. She is intimately familiar with the salesperson registration process.

Ms. A [REDACTED] reviewed the salesperson registration process. Through the AMVIC website the applicant accesses the portal and completes the application and background check. Basic information is requested. Criminal record information is requested as part of the eligibility questions. The applicant is responsible for requesting the required criminal record check through an independent third party. The applicant also pays for and completes an online course and must obtain a grade of 80% or higher. The course is intended to educate the applicant regarding the applicable dos and don’ts with respect to how they are to conduct themselves and their responsibilities in dealing with the public. Once the application is completed and submitted it is reviewed by an assigned licensing advisor. The advisor, as part of their review, conducts an open-source check with respect to other regulatory bodies. The criminal records check results, however, are reviewed by either the manager or team lead. Having a criminal record does not automatically result in the denial of a registration. Each application is reviewed and assessed on a case-by-case basis. The application process serves to vet applicants to ensure that they meet the expected standard of integrity in this industry.

If there are concerns arising from the criminal record or open-source check, the matter is referred to the Director. A report is prepared by licencing and presented to the Director which includes the application, criminal record check and open-source information. The applicant is invited to attend a virtual administrative review with the Director and to provide information. It is the Director who makes the final decision with respect to the application under review.

Ms. A [REDACTED] explained the recent changes to the salesperson registration application process. In March 2021 licensing changed its record keeping system and at that time AMVIC ceased conducting police background checks. The applicant is now responsible for doing so. In March 2021, the applicable grace period for expired registrations was shorted from 90 to 30 days. Any application submitted after the 30 days is considered a reinstatement application. Any application received within the 30 days after expiry is a renewal application.

The eligibility questions are the same in the case of both new and reinstatement applications. A criminal record check is required.

In the case of Mr. Tesfai, his application was a reinstatement application. His previous salesperson registration had expired in July 2021. The matter was referred to the Director as there were concerns arising from the [REDACTED]. Specifically, in response to the question regarding pending [REDACTED], Mr. Tesfai did declare that he did have [REDACTED], but the [REDACTED] showed more [REDACTED] than were disclosed in the application. In addition, when asked if he was subject to any [REDACTED], Mr. Tesfai answered “no” which was not accurate given the results of the [REDACTED].

As for the [REDACTED] themselves, they include serious [REDACTED]. The [REDACTED] are recent and there are multiple [REDACTED]. [REDACTED] Mr. Tesfai could face [REDACTED]. The [REDACTED] also include *Traffic Safety Act* (“TSA”) [REDACTED] and based on those [REDACTED] there was a concern as to whether Mr. Tesfai had a [REDACTED] and, if not, had he advised his employer that he [REDACTED]. Was he [REDACTED] vehicle owned by the dealership without having a [REDACTED]?

Neither Mr. Tesfai nor the Appeal Committee had any questions for Ms. A [REDACTED]

Appellant Submissions

Mr. Tesfai explained that the reinstatement process was a bit unclear to him. The application questions appeared to focus more on convictions. He was asked to do a criminal record check which he did. He then received an email from Ms. A [REDACTED] requesting that he obtain a police check from the local police which he also did. When he did the telephone interview with the Director, he was happy to provide more details. He disclosed what the [REDACTED] were. The only thing he did not disclose were the TSA [REDACTED] as he was not aware of them at the time. Mr. Tesfai confirmed that he is a licensed driver. The allegation with respect to [REDACTED] relate to him [REDACTED]. He has never acted carelessly when on test drives. Mr. Tesfai explained that his understanding is that the [REDACTED] against him have changed and that three of the [REDACTED] [REDACTED]. Prior to these [REDACTED] he had no run-ins with the law. At the time, he was running with the wrong crowd. He is innocent until proven guilty.

With respect to the question about conditions, Mr. Tesfai explained that he was confused at the time. He was, however, open about them when he had the telephone interview with the Director. The [REDACTED] do not include a [REDACTED]. They do include a [REDACTED] and he cannot [REDACTED].

Mr. Tesfai was questioned by counsel for AMVIC. He confirmed that he found both the question about pending charges and the question about conditions confusing. He did explain to the Director that he was confused by the process. He told the Director everything and provided clarification. Mr. Tesfai confirmed that while he found the question about conditions confusing at the time, looking at the question now he understands how he could have avoided this.

Mr. Tesfai explained that he has retained new counsel in connection with the [REDACTED] matters. He understands that three of the [REDACTED] against him have been [REDACTED] of [REDACTED]. He learned of this last week. His next [REDACTED]. He confirmed receiving an email from Ms. Hale re: the summary of [REDACTED] in advance of this appeal hearing and her request that he advise of any inaccuracies.

As a result of Mr. Tesfai's submissions regarding the recent changes to his outstanding [REDACTED] AMVIC requested, and was given, a brief adjournment to review the matter with counsel. The hearing reconvened and Ms. Hale advised that a JOIN (Justice Online Information Network) search had been conducted and a report obtained. According to that search a [REDACTED]

In light of this new information Ms. A [REDACTED] was re-examined. She confirmed that during the break she ran a JOIN search. The [REDACTED] A [REDACTED] [REDACTED] these changes, however, do not change AMVIC's position. The [REDACTED] appearing on the [REDACTED] are serious. There are still [REDACTED] They are recent. AMVIC remains concerned. Ms. A [REDACTED] also confirmed that even if only one [REDACTED] AMVIC would still be concerned. The only thing that could change AMVIC's view is [REDACTED].

The Chair confirmed that the [REDACTED]. Mr. Tesfai could not say whether the [REDACTED] would actually proceed at that time as the matter could be resolved in advance.

Counsel for AMVIC confirmed Mr. Tesfai's next [REDACTED] Mr. Tesfai explained that he would then have a better idea of what happened to the original [REDACTED] and what the [REDACTED] would now be pursuing.

AMVIC Closing

Counsel acknowledged that with the new information regarding Mr. Tesfai's [REDACTED] that there are facts in dispute. Fundamentally, however, the position of AMVIC is unchanged.

The objective of the CPA is consumer protection. The CPA and the code of conduct contain various provisions targeting dishonesty or misrepresentation. They are explicitly addressed in the CPA. The salesperson application serves to establish the entry threshold. It is a best attempt to rule out those who have breached that more explicit provision in the CPA. It provides a method to assess for those persons who, when faced with a difficult decision, still do the right thing. Once an applicant meets this threshold, reliance is then on the integrity of the participant in the system. AMVIC relies on the integrity of the participants in the automotive industry. One of the red flags for AMVIC are those applicants with serious breaches of the law.

In this case, even if most of the [REDACTED] This causes AMVIC concern. AMVIC acknowledges that Mr. Tesfai has not been [REDACTED] However, when someone is facing [REDACTED], serious questions are raised including, for example, will this person follow the rules? Protection of the public is the concern. There is evidence that brings Mr. Tesfai's integrity into question. AMVIC has not presumed he will be [REDACTED] AMVIC referenced the 2010 decision of the Alberta Court of Queen's Bench of *Ahmad v. Alberta Motor Vehicle Industry Council*, 2010 ABQB 293, where the Court found that it was appropriate for AMVIC to consider an applicant's complete history (convictions, charges and other regulatory background). In this case it is Mr. Tesfai's [REDACTED] that are concerning. Once his [REDACTED] are addressed, he can certainly reapply for a salesperson registration.

AMVIC submits that if the Appeal Committee is inclined to give Mr. Tesfai a salesperson registration, any such registration should be conditional and include the following conditions:

1. He report any [REDACTED] to AMVIC within two business days;
2. If he wishes to renew his salesperson registration that he do so on time to demonstrate that he is compliant;
3. He be required to disclose any [REDACTED] to his employer/potential employer and any subsequent employer;
4. He advise AMVIC of the outcome of the [REDACTED] within two business days;
5. He provide any requested information and documents in a timely fashion; and
6. That any conditions imposed remain in place until the matter is resolved.

AMVIC submitted that the Appeal Committee might consider another option. If the Appeal Committee is concerned or has questions regarding what [REDACTED]. Tesfai is currently [REDACTED], that Mr. Tesfai be given until Monday, September 5, 2022, to provide the Appeal Committee (through AMVIC) with any clarification regarding the [REDACTED] and thereafter make its decision regarding the outcome of this appeal.

Appellant Closing

Mr. Tesfai submits that it was never his intention to mislead AMVIC when he completed his reinstatement application. He has had no prior run-ins with the law. He has been a licensed salesperson since 2018. The situation is new to him. It has caused him a great deal of stress. He

was more than happy to explain his situation to AMVIC when he attended the administrative review before the Director. He is not a threat to the public. Automotive sales is his first career path and he would never do anything to jeopardize that. Whatever decision the Appeal Committee makes he will still try to walk the path of not having any [REDACTED] issues with the law. Sales kept him in check and kept him true. It was how he provided for his family. He hopes he prevails in this situation [REDACTED]. If granted the privilege of once again being granted his salesperson registration, he will act with integrity.

ISSUE TO BE DETERMINED ON THIS APPEAL

The issue before this Appeal Committee is whether, pursuant to section 3.2(2) (m) of the Appeal Policy, the Director's Decision to refuse to grant a salesperson registration to Mr. Tesfai was consistent with the provisions of the CPA, the ABR, and the Bylaws and policies of AMVIC (collectively the "Governing Authorities").

THE DECISION

It is the unanimous decision of this Appeal Committee to dismiss Mr. Tesfai's appeal. In reaching its decision, the Appeal Committee considered the oral and documentary evidence presented and the arguments of the parties.

AMVIC regulates the automotive industry in Alberta. Its mandate is to, among other things, provide consumer protection in that industry through mandatory licensing of automotive businesses and salespeople in accordance with the CPA. The Director is given the discretion to refuse to issue a licence or registration for any of the reasons set out in section 127 of the CPA.

The Director refused Mr. Tesfai's reinstatement application pursuant to subsections (b) (iii) and (c) of section 127 of the CPA.

Mr. Tesfai acknowledges that when he completed his reinstatement application he was confused by the question concerning any pending charges and the question regarding whether he was subject to, among other things, court ordered conditions. He says that he did not intend to provide false information or to fail to provide information. While we believe Mr. Tesfai in that regard, in our view Mr. Tesfai's failure to ensure that he understood the questions before answering them is concerning given the responsibilities of an automotive salesperson including, for example, the preparation of necessary sales documentation.

However, the more concerning aspect of this matter is Mr. Tesfai's [REDACTED]. We appreciate that the nature of the [REDACTED] has changed since the May 2022 administrative review, but it is the case there are still [REDACTED] and they are serious. The Director's refusal to grant Mr. Tesfai a salesperson registration was consistent with the provisions of the Governing Authorities and, in particular, section 127(c) of the CPA. Based on the evidence before us, including the new evidence with respect to the status of Mr. Tesfai's [REDACTED], we are of

the unanimous view that Mr. Tesfai's application for reinstatement be refused and we confirm the Director's Decision.

Dated this 1st day of September 2022.

"original signed by"

Erol Yersel
Chair – AMVIC Salesperson Appeal Committee