

May 2, 2023

Administrative Review – 23-01-004  
Served Personally

### **Administrative Penalty**

SOUTH TRAIL H LTD.  
o/a SOUTH TRAIL HYUNDAI  
6403 130 AVENUE SE  
CALGARY, AB  
T2Z 5E1

**Attention: Michael McManes and James McManes**

Dear Michael McManes and James McManes:

**Re: South Trail H Ltd. operating as South Trail Hyundai  
– Provincial Automotive Business Licence No. B2015168**

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 an investigator and the senior manager of investigations. A copy of the Application Report is attached as Schedule “A” to this letter. I have also taken into consideration the information exchanged during an administrative review held via teleconference call on March 7, 2023. The Supplier provided written representations via email dated April 17, 2023 (attached as Schedule “D”), in response to the Proposed Administrative Penalty, which I have also taken into consideration.

### ***Licensee Status***

South Trail H Ltd. operating as South Trail Hyundai (the “Supplier”) holds an automotive business licence and carries on the business activities of new and used sales, garage, leasing, and service station in the Province of Alberta.

### ***Administrative Review***

An administrative review was held on March 7, 2023, at approximately 9 a.m., via teleconference call. Participating in the administrative review were Dan Katz, managing partner for the Supplier; ■■■

██████████ AMVIC investigator; ██████████, AMVIC manager of investigations south; and G. Gervais, Director of Fair Trading (as delegated).

### **Enforcement History**

- A. An administrative review was held with the Supplier in February 2022 and correspondence was forwarded to the Supplier dated Feb. 15, 2022 which outlined proposed conditions that would be imposed on the business licence of the Supplier for a 12 month period. The Feb. 15, 2022 correspondence required the Supplier to sign acknowledging and agreeing to the proposed conditions.

The Director received an email from Dan Katz on March 15, 2022 stating *"It is my understanding that the conditions laid out are part of normal business operations and shall be adhered to going forward."* Numerous attempts were made to contact Mr. Katz unsuccessfully as he had not signed the Conditional Business Letter agreeing to the proposed conditions. On April 20, 2022, as per Section 127 of the CPA, the Director imposed the following conditions on the Supplier's business licence for a **12 month** period:

1. *The Supplier will make their business records available for an AMVIC Industry Standards inspection to ensure they are keeping the proper business records and in compliance with the legislation. This inspection will take place prior to **September 30, 2022.***
2. *The Supplier will ensure that they utilize a bill of sale ("BOS") that meets the legislative requirements and will properly complete the BOS to comply with Section 31.2 of the Automotive Business Regulation ("ABR").*
3. *The Supplier will ensure all advertising is in compliance with Section 11 of the ABR and specifically ensure they are complying with all-in pricing as required by Section 11(2)(l) of the ABR.*
4. *The Supplier will ensure that their employees or agents do not to do or say anything that might reasonably deceive or mislead a consumer as per Section 6(4)(a) of the CPA.*
5. *You will ensure that your AMVIC business licence does not expire by renewing prior to the expiry date.*

### **Educational Inspection**

- B. On Oct. 6, 2022, an AMVIC industry standards inspection was completed on the Supplier. A Findings Letter outlining the inspection findings was completed and sent to the Supplier on Oct. 14, 2022. This inspection was conducted as part of the conditions imposed on the Supplier by the Director as noted above. The findings letter indicated a number of shortcomings and deficiencies relating to advertising issues, all-in pricing, Mechanical Fitness Assessment ("MFA") issues, bill of sale ("BOS") and documentation issues. In paragraph eight of the Findings Letter, there is a reference to a consumer complaint received by AMVIC. The Supplier had been subject

to a consumer complaint, submitted to AMVIC on or about Sept. 6, 2022 (case file 22-09-048), in which the consumer alleged the Supplier deceitfully forced him to purchase optional products. No supporting documentation relating to this complaint was provided to the Director.

### ***Summary of Investigation***

#### Case File 22-08-402

1. In August 2022, AMVIC received a complaint in regards to being misled on the purchase price of a vehicle purchased, as well as information communicated by the Supplier during the buying process in relation to options, costs associated with the options and price given for their trade-in vehicle. In addition to the unfair practices alleged, the AMVIC investigation identified other breaches of legislation relating to the Supplier's failure to maintain accurate business records, including but not limited to their BOS.
2. On July 18, 2022, the consumer ("MM") entered into an initial offer to purchase BOS to trade-in his 2022 Hyundai Santa Fe (the "Santa Fe") and purchase a 2022 Hyundai Tucson (the "Tucson").
3. On July 28, 2022, MM purchased the Tucson for a purchase price of \$58,833.94 plus applicable fees, taxes, warranty and an "Alberta Climate Package".
4. MM alleged that the purchase price for the Tucson increased by \$14,640 above the basic vehicle price. The salesperson explained that it had something to do with a cancelled vehicle that another client had ordered with a number of additions and these were not presented to MM as options. The Tucson already had an undercoat, interior protection, rust protection, ceramic coating, 3M protection, windshield insurance and weather tech mats. MM asserts he was not informed these add-ons were optional, was not allowed to remove them and felt pressured to purchase them otherwise the Tucson would be sold to someone else interested. MM was not provided with the itemized pricing for each of these options.
5. MM further alleges that additional fees were added to the BOS including a \$2,495 "Alberta Climate Package" that included other optional protection packages that were not fully explained which he believes included a block heater. MM asserts the "Alberta Climate Package" was represented as an extended warranty and the Supplier made it seem like he had to purchase the warranty to get the key fob protection and windshield coverage. MM was shown a matrix and some of the items listed on the left side of the final BOS were already included in the "Alberta Climate Package".
6. MM stated to the AMVIC investigator that in regards to his trade-in, the Santa Fe, the Supplier would pay off the lien amount outstanding and no further explanation was provided to him regarding any potential negative equity being incurred.
7. The AMVIC investigator obtained documents relating to the consumer transaction.
8. In the review of the offer to purchase BOS dated July 18, 2022, the following details were noted by the Director (see Schedule "A"; Exhibit B):

- Sale price for the Tucson – \$55,824;
- Trade-in allowance for the Santa Fe – \$44,000;
- Lien payout for the Santa Fe – \$46,350;
- The following optional products are itemized but there are no prices listed:  
*“3M PROTECTION  
UNDERCOATING  
INTERIOR PROTECTION  
RUST PROTECTION  
CERAMIC COATING  
WEATHER TEC MATS”*; and
- No total balance is listed.

9. A final BOS dated July 28, 2022 lists both MM and a co-purchaser, JM (MM’s spouse). In the review of the final BOS, the following details were noted by the Director (see Schedule “A”; Exhibit C):

- Basic vehicle cost after *“DELIVERY + DESTINATION”* for the Tucson – \$43,624;
- Sale price for the Tucson – \$58,264;
- Trade-in allowance for the Santa Fe – \$46,440;
- Lien payout for the Santa Fe – \$46,440;
- The following optional products are itemized but there are no prices listed:  
*“UNDERCOATING  
INTERIOR PROTECTION  
RUST PROTECTION  
CERAMX  
FILM, BASIC  
WINDSHIELD INSURANCE  
WEATHER TECH MATS”*;
- The consumer’s government issued identification is missing; and
- The salesperson registration numbers for the salesperson and finance manager are both missing.

The difference in price between the basic vehicle cost (including delivery and destination) and the sale price of the Tucson is \$14,640. According to the Supplier, this included \$4,440 in negative equity and \$10,200 for the additional products.

10. Various agreements between the Supplier and MM and JM including a “Vehicle Limited Lifetime Warranty Total Car Care Protection Program”, “Waiver of Responsibility”, “Platinum AutoCare Agreement” and a “Windshield Insurance registration form” are all dated July 28, 2022 (see Schedule “A”; Exhibit D). There are no prices for any of the protections listed on these documents and the treatment date that the “Total Car Care Program” including paint sealant, fabric protector, under coating, rust protection, nitrogen, tire/rim/key and protection film is listed as July 28, 2022 the same date as the final BOS.

11. A work order dated July 28, 2022 from the Supplier (see Schedule “A”; Exhibit E) shows it was created on July 18, 2022 and was ready July 28, 2022. This work order lists that a block heater was

installed, the Tucson was cleaned up, wheel locks were installed, four way leather and vinyl guard, rust inhibitor, undercoat and pearl express application, basic paint protection film to hood fender and mirrors was applied, and weather tech mats were installed. A trailer hitch kit was also installed, which was at the request of MM.

12. The Supplier reimbursed MM and JM \$2,619.75, the cost of the “Alberta Climate Package” fee, at the onset of the investigation.
13. The AMVIC investigator emailed the Supplier on Nov. 25, 2022 with a list of clarifying questions. On Dec. 2, 2022 the Supplier emailed the AMVIC investigator a response (see Schedule “A”; Exhibit F). The Supplier indicated the following:

- The Supplier could not confirm that the Tucson was in fact a client cancellation.
- MM had \$4,400 in negative equity.
- The actual trade-in value for the Santa Fe was \$42,000, not \$46,440 as stated on the BOS.
- The \$14,640 difference between the basic vehicle price of \$43,624 (including delivery and destination) and the sale price for the Tucson of \$58,264 is made up of the negative equity plus the cost of all the accessories as itemized on the BOS.
- The Supplier did not provide the itemized charge for each of the option products lists on the BOS as requested by the investigator.
- The costs of the optional products and services are included in the price of the vehicle, except for the hitch, which was requested by MM.
- The “Platinum Auto Care Agreement” is included in the “Alberta Climate Package”. It is listed on the right hand side of the BOS, and the cost charged to MM and JM was \$2,495.

14. The Dec. 2, 2022 email from the Supplier to the AMVIC investigator also stated,

*“I would like it noted that it was through this deal as well as a recent AMVIC and internal audit that the discrepancy in complete information regarding extras sold to the customer were not being consistently itemized on the final bill of sale. This is a process/people concern that resulted in a software change, as well as a contributing factor in [name of salesperson] departure.*

*I trust this, along with the goodwill extended to the customer, will satisfy any concerns.”*

15. The AMVIC investigator requested the deal summary from the Supplier and it was never provided as the Supplier does not have a deal summary, however an internal document called “Reference Detail Report” (see Schedule “A”; Exhibit G) was provided instead. This report lists the actual trade-in value of the Santa Fe as \$42,000. It was also not clear from this document what the breakdown of charges were for all of the products sold to MM and JM. The actual trade-in value of \$42,000 MM received is less than the \$44,000 that is listed on the offer to purchase BOS dated July 18, 2022.
16. The following deficiencies with the Supplier’s BOS were noted by the AMVIC investigator:

- The consumer's government issued identification is missing;
- The registration number for the salesperson and finance manager are both missing;
- The BOS does not itemize the costs of each product sold to MM and JM and therefore \$10,200 of added products were added to the sale price of the Tucson;
- The trade-in value of the Santa Fe is not accurately identified;
- Negative equity of \$4,440 was hidden and not disclosed on the BOS, and was added to the sale price of the Tucson; and
- The trade-in value listed on the final BOS is not the accurate amount the Supplier gave to MM for their trade in.

In addition, the offer to purchase BOS that MM signed on July 18, 2022 indicates a trade-in value that is \$2,000 higher than what MM actually received in the transaction.

### ***Supplier's Representations during Administrative Review***

17. The Supplier has been in the automotive industry since Feb. 6, 2017 and is a high volume automotive business that sold approximately 900 vehicles in 2022. The Supplier employs 50 employees which includes 11 salespeople.
18. The Supplier indicated it was not necessary for the AMVIC investigator to go over all of the investigative material in-depth and preferred an abbreviated version as he was already familiar with the documents.
19. The Supplier indicated that the salesperson involved in this consumer transaction is no longer employed with the Supplier as of the end of October 2022. The Supplier paid a significant severance package to this employee.
20. During the administrative review, the Director discussed the Oct. 14, 2022 Findings Letter that outlined the findings of the recent AMVIC industry standards inspection. The Director expressed his concern about the findings of the recent AMVIC inspection, given it was completed less than eight months after the Director imposed conditions on the Supplier's business licence. The Supplier expressed that the industry standards officer ("ISO") had communicated that the findings of the inspection were in line with other automotive businesses. The Director disagreed with this statement.
21. The Supplier advised they have transitioned to a different way of processing their information to mitigate errors and the completion of their paperwork. Adjustments were made inside their customer retention management software and dealer management software, and now original documents match final documents.
22. During the administrative review, when the Director asked the Supplier about the costs of the products that were applied to the Tucson that had never been disclosed to MM or disclosed on the BOS, the Supplier advised they were listed in their internal document, "Reference Detail Report". The Supplier derived an economic benefit of approximately \$2,700 out of the \$10,200 that was added to the BOS.

23. When the Director inquired with the Supplier regarding the negative equity hidden in the sale price and differences in trade-in values given to MM and JM, the Supplier stated this is what the financial institutions and consumers have told them they want to see on the BOS. In response to this comment, the Director reminded the Supplier that it is fraudulent to hide negative equity and not list true values on a BOS. The Director further advised the Supplier that banks and consumers do not have to adhere to the CPA and its associated regulations but as a member of a regulated industry, they must. At this time, the manager of investigations south also brought up the Supplier's obligations as written as a part of their dealer agreements with financial institutions.
24. The Supplier acknowledged the general conduct described in the AMVIC investigation and regrets engaging in the aforementioned activity and strives to do better.
25. The Supplier expressed that should the Director find the Supplier was in breach of the legislation and were to impose an Administrative Penalty, to consider the fact that they identified an issue with an employee and took the necessary steps to terminate the employee even at a significant financial cost to the dealership.
26. The Supplier provided written representations, dated April 17, 2023, in response to the Proposed Administrative Penalty (see Schedule "D").

## Legislation

### **Automotive Business Regulation**

#### **Records**

##### **Section 9**

In addition to the requirement to create and maintain financial records in accordance with section 132(1) of the Act, 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.

#### **Bill of sale**

##### **Section 31.2**

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

- (a) the name and address of the consumer;
- (b) the number of the government-issued identification that the business operator uses to confirm the identity of the consumer;**
- (c) the name, business address and licence number of the business operator;
- (d) if a salesperson is acting on behalf of the business operator, the name and registration number of the salesperson;**
- (e) the make, model and model year of the vehicle;
- (f) the colour and body type of the vehicle;
- (g) the vehicle identification number of the vehicle;
- (h) the date that the bill of sale is entered into;
- (i) the date that the vehicle is to be delivered to the consumer;



- (j) an itemized list of all applicable fees and charges the consumer is to pay, including, without limitation:
  - (i) charges for transportation of the vehicle;
  - (ii) fees for inspections;
  - (iii) fees for licensing;
  - (iv) charges for warranties;
  - (v) taxes or levies, including GST;
- (k) the timing for payment by the consumer of the fees and charges under clause (j);
- (l) an itemized list of the costs of all extra equipment and options sold to the consumer in connection with the vehicle or installed on the vehicle at the time of sale;**
- (m) the total cost of the vehicle, which must include the fees, charges and costs listed under clauses (j) and (l);
- (n) the down payment or deposit paid by the consumer, if any, and the balance remaining to be paid;
- (o) if the consumer is trading in another vehicle to the business operator in connection with the purchase of the vehicle,
  - (i) information about the vehicle being traded in, and
  - (ii) the value of the trade-in allowance incorporated into the cost of purchase of the vehicle;
- (p) the balance of any outstanding loan that is incorporated into the cost of purchase of the vehicle;
- (q) if, in connection with the purchase of the vehicle, the business operator enters into a credit agreement with the consumer or arranges a credit agreement for the consumer, the disclosure statement required under Part 9 of the Act;
- (r) an itemized list of any items or inducements the business operator agrees to provide with the vehicle at no extra charge;
- (s) the odometer reading of the vehicle at the time the bill of sale is entered into, if the vehicle has an odometer and the odometer reading is available to the business operator;
- (t) the maximum odometer reading of the vehicle at the time of delivery to the consumer if the vehicle has an odometer and
  - (i) the odometer reading is not available to the business operator at the time the bill of sale is entered into, or
  - (ii) the vehicle is a new, specifically identified vehicle;
- (u) any mechanical fitness assessment that has been issued under the Vehicle Inspection Regulation (AR 211/2006);
- (v) any disclosure statement or documentation respecting a vehicle's previous use, history or condition, including disclosure statements or documentation required under the laws of another jurisdiction;
- (w) a declaration that the business operator has disclosed to the consumer the information required under section 31.1.

**(2)** The business operator must ensure that all restrictions, limitations and conditions imposed on the consumer under the bill of sale are stated in a clear and comprehensible manner.



## **Consumer Protection Act**

### **Interpretation of documents**

#### **Section 4**

If a consumer and a supplier enter into a consumer transaction, or an individual enters into a contract with a licensee and the licensee agrees to supply something to the individual in the normal course of the licensee's business, and

(a) all or any part of the transaction or contract is evidenced by a document provided by the supplier or licensee, and

(b) a provision of the document is ambiguous,

the provision must be interpreted against the supplier or licensee, as the case may be.

### **Unfair practices**

#### **Section 6**

(1) In this section, "material fact" means any information that would reasonably be expected to affect the decision of a consumer to enter into a consumer transaction.

(1.1) It is an offence for a supplier to engage in an unfair practice.

(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;

### **Duty to maintain records**

#### **Section 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.

### **Administrative Penalties**

#### **Notice of administrative penalty**

##### **Section 158.1**

(1) If the Director is of the opinion that a person

(a) has contravened a provision of this Act or the regulations, or

(b) has failed to comply with a term or condition of a licence issued under this Act or the regulations,

the Director may, by notice in writing given to the person, require the person to pay to the Crown an administrative penalty in the amount set out in the notice.

(2) Where a contravention or a failure to comply continues for more than one day, the amount set out in the notice of administrative penalty under subsection (1) may include a daily amount for each day or part of a day on which the contravention or non-compliance occurs or continues.

(3) The amount of an administrative penalty, including any daily amounts referred to in subsection (2), must not exceed \$100 000.

(4) Subject to subsection (5), a notice of administrative penalty shall not be given more than 3 years after the day on which the contravention or non-compliance occurred.

(5) Where the contravention or non-compliance occurred in the course of a consumer transaction or an attempt to enter into a consumer transaction, a notice of administrative penalty may be given within 3 years after the day on which the consumer first knew or ought to have known of the contravention or non-compliance but not more than 8 years after the day on which the contravention or non-compliance occurred.

### **Right to make representations**

#### **Section 158.2**

Before imposing an administrative penalty in an amount of \$500 or more, the Director shall

- (a) advise the person, in writing, of the Director's intent to impose the administrative penalty and the reasons for it, and
- (b) provide the person with an opportunity to make representations to the Director.

### **Vicarious liability**

#### **Section 166**

For the purposes of this Act, an act or omission by an employee or agent of a person is deemed also to be an act or omission of the person if the act or omission occurred

- (a) in the course of the employee's employment with the person, or
- (b) in the course of the agent's exercising the powers or performing the duties on behalf of the person under their agency relationship.

### **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 a consumer complaint received by AMVIC, case file 22-08-402.

#### **A. Mislead and Deceive (CPA Section 6(4)(a))**

MM asserts that in regards to his trade-in, the Santa Fe, the Supplier would pay off the lien amount outstanding and no further explanation was provided to him regarding any potential negative equity being incurred. The trade-in value of the Santa Fe is not clearly identified on the Supplier's final BOS. The offer to purchase BOS that MM signed on July 18, 2022 indicates a trade-in value that is \$2,000 higher than what MM actually received on July 28, 2022.

In an email response to the AMVIC investigator on Dec. 2, 2022 the Supplier could not confirm that the Tucson was in fact a client cancellation as was communicated to MM by the Supplier's salesperson. The Supplier confirmed that MM had \$4,400 in negative equity which was not disclosed on the BOS and was added to the sale price of the Tucson unbeknownst to MM and JM. The Supplier further explained that

the \$14,640 difference between the basic vehicle price of \$43,624 (including delivery and destination) and the sale price for the Tucson of \$58,264 is made up of the negative equity plus the cost of all the accessories as itemized on the BOS, which cannot be easily interpreted when reviewing the final BOS. The Supplier's internal document, "Reference Detail Report", does not clearly identify all of the costs of the optional products sold to MM and JM. The Supplier indicated during the administrative review they derived an economic benefit of approximately \$2,700 from the protection products that were added to the Tucson. However, in reviewing the documents the Director cannot ascertain how the Supplier came up with this number.

Various agreements between the Supplier and MM and JM including a "Vehicle Limited Lifetime Warranty Total Car Care Protection Program", "Waiver of Responsibility", "Platinum AutoCare Agreement" and a "Windshield Insurance registration form" are all dated July 28, 2022 (see Schedule "A"; Exhibit D). There are no prices for any of the protections listed on these documents and it is to be noted that the treatment date that the "Total Car Care Program" including paint sealant, fabric protector, under coating, rust protection, nitrogen, tire/rim/key and protection film is listed as July 28, 2022 the same date as the final BOS. A service order lists the Tucson was taken in July 18, 2022 the date of the initial offer to purchase.

The Supplier advised they cannot confirm what was told to MM as the employee was terminated at the end of October 2022. The Supplier is vicariously liable for the actions and representations made by their designated agents; as well as all records created and maintained by an employee or designated agent acting on their behalf in the course of completing the Supplier's delegated business activities. The records maintained by the business should be able to stand alone and not only should the Supplier be able to determine the details of a transaction based on their records, the Director should be able to review the business records and ascertain what happened in the transaction, including what the consumer was charged for products, which is not the case in this matter.

In the opinion of the Director, in order for MM and JM to understand their transaction, they would need a number of additional documents that were not available to them, and even then, they likely would be unable to determine the costs of the products and services they paid for. The amount of the products and services sold to MM and JM need to be itemized with the corresponding price, the price of the vehicle, the amount being given towards the trade-in, and the amount of negative equity being rolled into the financing of the Tucson should be clear and accurate, which is not the case in this matter. The Supplier admitted they were not consistently itemizing extras sold to consumers on their BOS. In email communication with the AMVIC investigator on Dec. 2, 2022 (see Schedule "A"; Exhibit F) the Supplier stated,

*"I would like it noted that it was through this deal as well as a recent AMVIC and internal audit that the discrepancy in complete information regarding extras sold to the customer were not being consistently itemized on the final bill of sale. This is a process/people concern that resulted in a software change, as well as a contributing factor in [name of salesperson] departure.*

*I trust this, along with the goodwill extended to the customer, will satisfy any concerns."*

The BOS has a number of deficiencies as noted above and as a result of not disclosing the negative equity, improperly listing discrepancies in the trade-in value of the Santa Fe, and not including costs for

optional products. The legislation is very clear, if a provision of a document is ambiguous, the provision must be interpreted against the Supplier in accordance with Section 4 of the CPA. Due to the deficiencies on the BOS and the statements made to the consumer by the Supplier, JM and MM did not understand the true nature of the transaction and were misled regarding the details of their transaction. In reviewing the evidence, multiple details of the transaction are ambiguous and therefore in accordance with Section 4 of the CPA, the Director must interpret the provision against the Supplier.

On a balance of probabilities, the Director finds that the Supplier misled MM and JM through their words, actions and paperwork during the course of the consumer transaction, and therefore the Supplier did contravene Section 6(4)(a) of the CPA.

#### B. Non-compliant BOS (ABR Section 31.2(1))

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

The Supplier's BOS and the fact they were not maintaining accurate business records was discussed during the administrative reviews held in February 2022. The Director imposed conditions on the Supplier's business licence for a 12 month period on April 20, 2022. These conditions remain in effect until April 20, 2023. The Supplier has breached the conditions imposed on their business licence.

On Oct. 6, 2022 as part of the conditions imposed by the Director, a followup inspection was completed on the Supplier. On Oct. 14, 2022 the Supplier was sent an inspection findings letter. The ISO reviewed 29 vehicle sale files, and the Findings Letter identified a number of shortcomings and deficiencies despite the education provided to the Supplier during the previously held administrative reviews. The Oct. 14, 2022 Findings Letter (see Schedule "A"; Exhibit J) indicated the following concerns with the Supplier's business practices:

- A number of advertising concerns including two vehicles not containing a vehicle history contrary to Sections 11 and 31.1 of the ABR;
- One vehicle was sold over the advertised price contrary to Section 11(2)(I) of the ABR;
- Three vehicles had MFAs signed after the BOS date contrary to Section 15(1) of the VIR;
- A large number of BOS issues including nine BOS' not including the consumer's government issued identification, six BOS' not including the salesperson registration number, four BOS' failing to identify the vehicle type and one BOS failing to record the mileage on a trade-in vehicle contrary to Section 31.2 of the ABR;
- One vehicle sales jacket in the credit application had a consumer's rent amount decreased and employment wages increased which is misleading to the financial lending institution and contrary to Section 6 of the CPA, and is fraudulent in nature; and

- In one wholesale transaction an AMVIC levy was charged when the remittance of levies is not required on wholesale vehicle transactions.

During the administrative review, the Director discussed the Oct. 14, 2022 Findings Letter that outlined the findings of the recent AMVIC industry standards inspection. The Director expressed his concern about the findings of the recent AMVIC inspection, given it was completed less than eight months after the Director imposed conditions on the Supplier's business licence. The Supplier expressed that the ISO had communicated that the findings of the inspection were in line with other automotive businesses. The Director disagreed with this statement.

The Supplier's BOS in this consumer transaction was found to have the following deficiencies:

- The consumer's government issued identification is missing as per Section 31.2(1)(b) of the ABR;
- The registration number for the salesperson and finance manager are both missing as per Section 31.2(1)(d) of the ABR;
- The BOS does not itemize the costs of each product sold to MM and JM and therefore \$10,200 of added products were added to the sale price of the Tucson as per Section 31.2(1)(l) of the ABR;
- The trade-in value of the Santa Fe is not clearly identified;
- Negative equity of \$4,440 was hidden and not disclosed on the BOS, and was added to the sale price of the Tucson; and
- The trade-in value listed on the final BOS is not the accurate amount the Supplier gave to MM for their trade in.

In addition, the offer to purchase BOS that MM signed on July 18, 2022 indicates a trade-in value that is \$2,000 higher than what MM actually received in the transaction.

Based on the evidence before me, on a balance of probabilities, the Director finds the Supplier contravened Sections 31.2(1) of the ABR.

#### C. Failure to Maintain Records (CPA Section 132(1) and ABR Section 9)

Section 132(1) of the CPA and Section 9 of the ABR set out the requirement for all business operators to create and maintain complete and accurate records. This includes both financial records and all records created or received while carrying on the business activities they are authorized to engage in.

In reviewing the evidence, the issues found with the Supplier's records show that they have failed to maintain **accurate** records. During the administrative review, when the Director inquired with the Supplier regarding the negative equity hidden in the sale price and differences in trade-in values given to MM and JM, the Supplier stated this is what the financial institutions and consumers have told them they want to see on the BOS. In response to this comment, the Director reminded the Supplier that to hide negative equity or not list true values on a BOS is fraudulent in nature. The Director further reminded the Supplier that the banks and consumers do not have to adhere to the CPA and its associated regulations but as a Supplier in a regulated industry, they must. The manager of investigations south also mentioned to the Supplier the obligations as written as a part of their dealer

agreements with financial institutions. The records maintained by the business should be able to stand alone and not only should the Supplier be able to determine what happened based on their records, the Director should be able to review the business records and ascertain what happened in the transaction, which is not the case in this matter.

Creating and maintaining accurate records is the best way for the Supplier to ensure the consumer is fully aware of all the details and required information during their transaction, and is also the best way for the Supplier to demonstrate they are complying with the legislative requirements.

Record keeping is an incredibly important part of running a business within a regulated industry. A recent Service Alberta Appeal Board rendered a decision (attached as Scheduled "B") regarding the importance of record keeping as a member of a regulated industry. Paragraph 152 of the Service Alberta Appeal Board decision states:

*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.*

Accurate record keeping is the best way for the Supplier to evince that they have complied with the legislation in the course of a transaction or potential transaction. On a balance of probabilities, the Director finds that the Supplier failed to maintain accurate records, and has contravened Section 132(1) of the CPA and Section 9 of the ABR.

#### D. Other Considerations

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.

The Supplier has been subject to a recent administrative enforcement action, as discussed above on April 20, 2022 the Director imposed conditions on the Supplier's business licence for a period of 12 months. These conditions remain in effect until April 20, 2023. The Supplier has breached the conditions imposed on their business licence.

It is to be noted that an administrative review was held with the Supplier in February 2022 in which the above noted legislation was discussed at length. Instead of signing the 12 month Conditional Business Letter dated Feb. 15, 2022, Dan Katz emailed the Director on March 15, 2022 stating "*It is my understanding that the conditions laid out are part of normal business operations and shall be adhered to going forward.*" The Supplier then, only months after the conditions had been imposed, breached numerous conditions that were imposed on their business licence. This causes the Director concern.

The Director also considered other enforcement actions such as entering into an Undertaking. In considering whether entering into a voluntary Undertaking with the Supplier would be appropriate, the Director is not satisfied that the Supplier has ceased the contraventions as per Section 152(1)(b) of the CPA. Further, the Director does not feel an Undertaking would adequately protect consumers due to the Supplier's failure to adhere to the conditions placed on their business licence.

The Director provided the Supplier an opportunity to change their business practices and bring them into compliance however, based on the findings of the inspection of Oct. 6, 2022 and the documents before the Director in relation to this consumer complaint (case file 22-08-402), the Supplier continues to engage in the non-compliant business practices which is very concerning to the Director.

The Supplier has been provided education during the previous administrative reviews, the 2022 AMVIC industry standards inspection, in the form of industry bulletins as well as been subject to conditions on their business licence however, they continue to engage in non-compliant business practices.

During the administrative review, the Supplier expressed that should the Director find the Supplier was in breach of the legislation and were to impose an Administrative Penalty, to consider that they identified an issue with an employee and took the necessary steps to terminate the employee, at a significant financial cost to the business. The amount of the Administrative Penalty cannot be viewed as a cost of doing business but rather as a deterrent for continuing to engage in non-compliant business practices.

The Supplier has been in the automotive industry since Feb. 6, 2017. The Supplier knew or ought to have known the requirements of being a managing partner of an automotive business in a regulated industry and the requirements of their salespeople. In the opinion of the Director, the Supplier has not been responsive in addressing the Supplier's shortcomings and deficiencies in particular relating to their financial records and BOS based on the recent AMVIC inspection on Oct. 6, 2022 and this consumer complaint. Some of the Supplier's representations during the administrative review were concerning to the Director in particular his response regarding hiding negative equity and discrepancies on trade-in values from an offer to purchase to a final BOS.

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.*

A recent Service Alberta Appeal Board rendered a decision (attached as Scheduled "C") and addressed the onus and responsibility of salespeople and Suppliers. The appeal panel at paragraph 91 stated:

*At the same time, we recognize that AMVIC is not there to hold a party's hand through the administrative process. Nor is it there to train applicants in terms of being administratively efficient. AMVIC is there to protect the public. The onus is on salespersons and car dealerships to*



*remain current with AMVIC and to comply with the regulatory framework in place at any given time.*

Misleading a consumer, failing to maintain proper records not limited to their BOS, hiding negative equity and failing to itemize the costs of each product sold leverages the Supplier's knowledge, and does not foster a level playing field between the consumer and the Supplier which eliminates the consumer's ability to make an informed purchasing decision. It further concerns the Director that the Supplier, despite all of the education and enforcement action, is repeating similar breaches of the legislation to the detriment of consumers. There was \$10,200 in optional products sold to MM and JM and added to the sale price of the vehicle in which the Supplier derived an economic benefit of approximately \$2,700. The offer to purchase BOS that MM signed on July 18, 2022 indicates a trade-in value that is \$2,000 higher than what MM actually received on July 28, 2022 further to the benefit of the Supplier.

The aggravating factors in this matter include the resulting financial impact adversely affecting the consumer, including being misled and being unaware of the costs charged with respect to products sold, the non-compliance with the rather straightforward requirements of the legislation after education and conditions being imposed on their business licence. The recent ISO inspection conducted on Oct. 6, 2022, which was not only part of the conditions imposed on the Supplier by the Director as noted above, but also a result of a further consumer complaint submitted on Sept. 6, 2022 (case file 22-09-048) in which the consumer alleged the Supplier deceitfully forced him to purchase optional products. The Findings Letter dated Oct. 14, 2022 completed by the ISO addressed a number of shortcomings and deficiencies relating to advertising issues, all-in pricing, BOS and documentation issues. Reimbursing MM and JM \$2,619.75 for the cost of the "Alberta Climate Package" fee that was charged does not satisfy the Director's concerns.

The mitigating factors include the reimbursement of the \$2,619.75 for the cost of the "Alberta Climate Package" fee to MM and JM at the time the AMVIC file was assigned to the AMVIC investigator, the termination of an employee and software changes implemented by the Supplier. In their written response to the Proposed Administrative Penalty (see Schedule "D"), the Supplier requested the costs they incurred in dealing with this matter be given more weight in determining the amount of the Administrative Penalty. Based on the evidence, in the Director's opinion, the cost the Supplier incurred in terminating the employee was appropriately weighted in the determination of the Proposed Administrative Penalty. Further, the costs the Supplier has stated they incurred in terminating the employee has not been supported by any documented evidence, but rather the Director has taken the word of the Supplier on good faith and factored in the costs incurred by the Supplier as a mitigating factor.

This Administrative Penalty is taking into account the number and seriousness of the contraventions of legislation found during the investigation as well as the cost of investigating the Supplier's activities; the aggravating and mitigating factors listed above; and the continued non-compliant business practices despite education and enforcement.

### **Action**

In accordance with Section 158.1(a) of the CPA and based on the above facts, I am requiring that South Trail H Ltd. operating as South Trail Hyundai pay an Administrative Penalty. This is based on my opinion

that South Trail H Ltd. operating as South Trail Hyundai contravened Sections 6(4)(a) and 132 of the CPA, and Sections 9, and 31.2(1) 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 **\$12,000**.

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 financial harm on the person adversely affected by the contraventions or failure to comply;
2. The seriousness of the contraventions or failure to comply;
3. The previous history of enforcement and non-compliance;
4. The failure to abide by the conditions imposed on the business licence;
5. The economic benefit derived from the contraventions or failure to comply;
6. The degree of willfulness or negligence in the contravention or failure to comply;
7. The maximum penalty under Section 158.1(3) of the CPA of \$100,000; and
8. The deterrent effect of the penalty.

**The amount of the Administrative Penalty is \$12,000.**

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 King'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 and Red Tape Reduction

Minister of Service Alberta and Red Tape Reduction  
103 Legislature Building  
10800 - 97 Avenue NW  
Edmonton, AB  
Canada T5K 2B6

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

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

Under Section 4 of the Administrative Penalties (*Consumer Protection Act*) Regulation, the fee for appealing an Administrative Penalty is the lesser of \$1,000 or half the amount of the penalty. As such, the fee for an appeal of this Administrative Penalty, should you choose to file one, would be \$1,000. Should you choose to appeal this Administrative Penalty, you must send the appeal fee to the Minister of Service Alberta and Red Tape Reduction at the above noted address, made payable to the "Government of Alberta".

Yours truly,

"original signed by"

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

GG/kl  
Encl.

cc: [REDACTED] Senior Manager of Investigations, AMVIC