

IN THE MATTER OF AN APPEAL BY

RACHEL GERRY

PURSUANT TO SECTION 127(C) OF THE CONSUMER PROTECTION ACT, BEING
CHAPTER C-26.3 OF THE REVISED STATUTES OF ALBERTA

AND

IN THE MATTER OF THE DECISION BY THE ALBERTA MOTOR VEHICLE INDUSTRY
COUNCIL TO REFUSE THE REGISTRATION OF THE APPELLANT AS AN
AUTOMOTIVE SALESPERSON UNDER THE CONSUMER PROTECTION ACT AND THE
AUTOMOTIVE BUSINESS REGULATION ON MARCH 9, 2023

Committee Chair: David Quest

Members: Ben Iyer
Alison Matthews

Richard Van Dorp,
Legal Counsel (Peacock Linder Halt & Mack LLP) for the Appeal
Committee

Appearances: Rachel Gerry, Appellant
Yoneke A [REDACTED] – AMVIC Manager of Licensing, Respondent
Paula Hale,
Legal Counsel (Shores Jardine LLP) for the Respondent

Appeal Heard: May 18, 2023
Via videoconference

Summary of Decision

1. The AMVIC Salesperson Appeal Committee (the “**Appeal Committee**”) dismisses the appeal and upholds the Registrar’s refusal to issue the Appellant a salesperson registration at this time.

Introduction

2. This is an appeal before the Appeal Committee pursuant to section 22 of the *Automotive Business Regulation*, AR 192/1999 (the “**ABR**”) from a decision of the Director of Fair Trading (as delegated) (hereafter the “**Registrar**”) to refuse the registration of Rachel Gerry as a provincial automotive salesperson under sections 104 and 127 of the *Consumer Protection Act* (the “**CPA**”).

Jurisdiction

3. The *CPA* and the *ABR* regulate, among other things, automotive business licenses and salesperson registrations in Alberta.
4. Under section 104 of the *CPA*, no person may engage in a designated business unless the person holds a licence under the *CPA* that authorizes them to engage in that business.
5. Pursuant to section 16 of the *ABR*, a salesperson of an automotive sales business operator must be registered for automotive sales before acting on behalf of the business operator.
6. The Registrar's jurisdiction with respect to automotive business licenses and salesperson registrations is found at section 127 of the *CPA*:

Refusal, suspension, cancellation, terms

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:

- (a) the applicant or licensee does not or no longer meets the requirements of this Act and the regulations with respect to the class of licence applied for or held;
- (b) the applicant or licensee or any of its officers or employees
 - (i) fails to comply with an order of the Director under section 129 or 157, unless, in the case of an order under section 129 or 157, the order has been stayed,
 - (i.1) fails to repay a fund created under section 137 in respect of amounts paid out in claims against the licensee,
 - (i.2) fails to pay a levy of assessment under section 136(8) or a levy of assessment for a fund created under section 137,
 - (ii) fails to comply with a direction of the Director under section 151(3),
 - (iii) furnishes false information or misrepresents any fact or circumstance to an inspector or to the Director,
 - (iv) fails to comply with any undertaking under this Act
 - (v) has, in Director's opinion, contravened this Act or the regulations or a predecessor of this Act,
 - (v.1) fails to comply with any other legislation that may be applicable,
 - (vi) fails to pay a fine imposed under this Act or a predecessor of this Act or under a conviction or fails to comply with an order made in relation to a conviction,
 - (vii) is convicted of an offence referred to in section 125 or is serving a sentence imposed under a conviction, or
 - (viii) fails to pay, in accordance with the notice of administrative penalty and the regulations, an administrative penalty imposed under this Act;

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

7. Section 18 of the *ABR* states that sections 125, 127 and 128 of the *CPA* apply, with necessary changes, to the registration of salespersons.
8. Section 22 of the *ABR* provides that a person may appeal a refusal to issue a registration in accordance with the process established by the Director.
9. In accordance with section 22 of the *ABR*, AMVIC has created the AMVIC Salesperson Appeal Committee Policy (the “**Appeal Policy**”).
10. The role of the Appeal Committee is set out in Section 3.2(2)(n) of the Appeal Policy:

The committee shall determine if the decision by the Registrar that is the subject of the appeal is consistent with the provisions of the *Consumer Protection Act*, the *Automotive Business Regulation*, and the Bylaws and policies of AMVIC.

Summary of Evidence

Background

11. Ms. Gerry applied for a salesperson registration on January 19, 2023. One of the questions on the application form required Ms. Gerry to disclose if she had ever [REDACTED].
[REDACTED] The application form also asked Ms. Gerry if she was [REDACTED].
12. As part of the application process, applicants are required to provide a police information check and they also authorize AMVIC to conduct additional background checks.
13. The information received and reviewed by AMVIC indicated that Ms. Gerry had [REDACTED].
14. The Registrar held an administrative review via telephone conference on March 7, 2023, with Ms. Gerry in attendance. The purpose of the review was to discuss AMVIC’s concerns with her application and provide Ms. Gerry with the opportunity to provide further information and representations.
15. On March 9, 2023, the Registrar issued a decision refusing Ms. Gerry an automotive salesperson registration (the “**Decision**”). The Registrar noted that at the administrative review, Ms. Gerry had been [REDACTED] apologized to the Director, and Ms. Gerry said she had not been paying proper attention when filling out the application. The Registrar in the Decision:
 - Concluded it was not in the public interest to issue Ms. Gerry a salesperson registration at this time.

- Emphasized the important expectation, found in the code of conduct applicable to anyone who wants to be licensed or registered with AMVIC, to provide accurate information.
- Confirmed Ms. Gerry has [REDACTED]
- Emphasized that salespeople must be relied on to consistently follow the law and the standards of conduct applicable to salespersons. The Registrar determined that Ms. Gerry had [REDACTED] of time. By not answering questions correctly, the Registrar was not persuaded Ms. Gerry had demonstrated she was capable of meeting the profession’s standards at this time. Nor was the Registrar persuaded that conditions could adequately protect the public at this time.

16. On March 9, 2023, Ms. Gerry provided a Notice of Appeal to AMVIC. In the reasons for the Appeal, among other things, Ms. Gerry emphasized that she is not a danger to the public, admitted her mistake, indicated she had been careless in her application, emphasized that she was trying to move on from her past and get back on her feet.

Evidence of AMVIC

17. AMVIC called Ms. Yoneke A [REDACTED], AMVIC’s Manager of Licensing, as a witness. Ms. A [REDACTED] explained the application process. She testified that she had been involved in reviewing Ms. Gerry’s application and had identified the discrepancy between the application, and the information received by AMVIC that led to the administrative review. She confirmed she had also attended the administrative review and confirmed the information and representations made by Ms. Gerry at the administrative review.

Evidence of the Appellant

18. Ms. Gerry explained that she had made a mistake when she had made the application. She explained that, at the time, she did not understand the role or importance of AMVIC or the application. She continued to express remorse and emphasized that she was trying to move on from her past. She confirmed she had started, but had not yet completed her [REDACTED]

Exhibits

19. The following Exhibits were entered at the hearing:
- [REDACTED]
 - A letter from Ms. Gerry’s lawyer [Exhibit 2]
 - Email with reference letters attached [Exhibit 3]
 - [REDACTED]

Argument

20. Counsel for AMVIC provided closing submissions explaining why, in AMVIC's view, the Decision should be upheld. Ms. Gerry also provided closing remarks. In her closing remarks, Ms. Gerry admitted that she had filled out the application incorrectly and again expressed remorse for doing so.

Reasons for Appeal Committee's Decision

21. The task of the Appeal Committee is to determine if the Decision is consistent with the provisions of the *CPA*, the *ABR*, and the Bylaws and policies of AMVIC. AMVIC is required to make decisions in the public interest focused on protecting consumers. Her [REDACTED], in our view, provide a sufficient basis to uphold the Registrar's refusal to issue Ms. Gerry a salesperson registration.
22. Ms. Gerry has not demonstrated [REDACTED]. The Appeal Committee endorses the Registrar's emphasis on the important expectation placed on all persons who seek a licence or registration from AMVIC, to provide accurate information, and to demonstrate they are capable of meeting the code of conduct requirements.
23. The Appeal Committee appreciates the work that Ms. Gerry has done to date, to move forward from her past, improve her life, and we accept her intention to fulfill the conditions applicable [REDACTED]. The evidence at this juncture does not, however, demonstrate that Ms. Gerry is capable at this time of meeting the standards of conduct applicable to a salesperson.
24. The Appeal Committee notes that the determinations made in this Appeal does not preclude Ms. Gerry from re-applying for a salesperson registration at a future date. The Appeal Committee cannot comment on when Ms. Gerry should re-apply.

Conclusion

25. In the result, the Appeal Committee finds that the Decision is consistent with the provisions of the *CPA*, the *ABR*, and the Bylaws and policies of AMVIC.

Issued and dated this 26 day of June 2023.

"original signed by"

Dave Quest
Chair – AMVIC Salesperson Appeal Committee