

**IN THE MATTER OF THE
CONSUMER PROTECTION ACT ("CPA")**

THIS **UNDERTAKING** is made pursuant to Section 152 of the *Consumer Protection Act* ("CPA").

BY: SHAGANAPPI MOTORS (1976) LTD.
at or near the city of Calgary, in the Province of Alberta
(hereinafter called the "Supplier")

TO: The DIRECTOR OF FAIR TRADING (as delegated)
(hereinafter called the "Director")

WHEREAS:

- A. At the time of the complaint, the Supplier was licensed by the Alberta Motor Vehicle Industry Council ("AMVIC") to carry on the automotive business activity of new and used sales, leasing, garage, service station and wholesale sales in the Province of Alberta.
- B. An AMVIC investigation (case file 22-04-260) was initiated as a result of a consumer complaint received by AMVIC in April 2022, alleging they were misled and deceived when the Supplier failed to disclose to them that a new vehicle they purchased had been involved in a reportable collision prior to the sale. In addition, the consumer further alleged that the Supplier in July of 2021, misdiagnosed the replacement of one front brake pad that was unnecessary.
- C. An administrative review was held via teleconference call on March 15, 2023 at approximately 9 a.m. Participating in the administrative review was Mr. Steve Rayton, general manager for the Supplier; [REDACTED], AMVIC investigator; [REDACTED], AMVIC manager of investigations south; and G. Gervais, Director of Fair Trading (as delegated).
- D. On July 31, 2017, the consumer ("MJ") purchased a new 2017 GMC Sierra (the "Sierra") from the Supplier for a purchase price of \$59,691.29 inclusive of taxes and fees.
- E. Around April of 2022, MJ was looking to sell the Sierra to a potential United States ("US") buyer who allegedly was prepared to pay \$42,000 USD for the Sierra. According to MJ, this potential buyer ran a search through Carfax which revealed the Sierra had been involved in a collision and allegedly rescinded their offer to purchase the Sierra.
- F. MJ contacted the Supplier and discovered that in fact the Sierra had been in a collision on the Supplier's lot on July 20, 2017, 11 days before MJ purchased the Sierra. The Supplier advised that a golf cart had backed into the front bumper of the Sierra causing damage in the amount of \$4,266.28.

- G. The Supplier requested that MJ bring the Sierra to the business and the Supplier appraised the Sierra, which had over 159,000 kilometres (“kms”) at a value of \$42,500 CAD. The Supplier explained to MJ that the Sierra required certain maintenance and servicing to be addressed prior to selling it. In addition, the Supplier advised that claims up to \$10,000 do not have an effect on appraisals because the cost of repairs to vehicles at body shops is very high and claims under \$10,000 would not diminish the value of the Sierra. MJ did not accept the offer of \$42,500.
- H. The Supplier later made a second offer to MJ of \$44,000 which was also rejected. At the time of the second offer, the Sierra was now over five years old with over 200,000 kms between purchase and appraisal.
- I. The AMVIC investigation provided evidence that a collision involving the Sierra had been reported to the local police force of jurisdiction on July 21, 2017 by the Supplier, the existence of a Carfax report showing the collision history of the Sierra and that the Supplier had knowledge of the collision yet failed to disclose the collision to MJ prior to purchase.
- J. The Supplier takes ownership that they failed to disclose the collision to MJ and state it was an isolated incident on their part and not a normal practice for them. By failing to disclose the previous vehicle history on the Sierra, the Supplier has breached Section 6(4)(a) and 6(4)(g) of the CPA and Section 12(a) of the Automotive Business Regulation (“ABR”).

Consumer Protection Act

Unfair practices

Section 6

(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;

(g) a supplier’s representation that goods are new if they are used, deteriorated, altered or reconditioned;

Automotive Business Regulation

General codes of conduct

Section 12

Every business operator must comply with section 6 of the Act and in addition must

(a) not make any representations, statements or claims that are not true or are likely to mislead a consumer

- K. MJ also alleges that his wife brought the Sierra to the Supplier on July 23, 2021 for regular servicing and that the service department diagnosed that one of the front brake pads on the Sierra should be replaced as was down to one millimetre of brake lining (1/32). MJ ordered new brake pads and when he went to replace the brake pad he discovered that in fact the front brake pad did not need replacing. On Dec. 8, 2022, an AMVIC investigator (“█”), who is a licensed technician,

examined the brake pad from the Sierra to determine the wear of the brake pad. In the opinion of [REDACTED], the brake pad alone did not indicate a braking deficiency which would require immediate replacement but a further inspection of the brake rotor including measurements and future monitoring was recommended.

- L. The AMVIC investigator spoke with the Supplier's service manager and assistant service manager on Oct. 12, 2022 in regards to the alleged brake pad issue. Neither could recall nor confirm the diagnosis and they had not spoken to the technician who would have performed the service on the Sierra.
- M. Prior to the administrative review, the Supplier sent written representations to the Director. The written representations provided state that the Supplier has adopted an internal process to ensure disclosure of all collisions on vehicles is communicated to consumers prior to any sale to prevent this from reoccurring on a go forward basis. The Supplier now makes all sales managers aware of any damages the vehicles in their inventory have sustained. The Supplier has a group email identifying damages to all sales managers. Additionally, an option code is added to the vehicle's stock card that identifies the vehicle has sustained damage. This indicates to all staff that might show the vehicle that the vehicle has sustained damage so they can disclose it to the consumer.
- N. The Supplier asserts their offer to purchase the Sierra back from MJ was more than fair considering the condition of the vehicle and the market value at the time. The Supplier stated that the consumer never provided any evidence of a written offer from the US buyer and they were not advised whether the US buyer had seen the Sierra or if MJ provided the Vehicle Identification Number ("VIN") to the US buyer to complete an accurate appraisal of the Sierra. Based on the documentation before the Director, there is insufficient evidence to support that there was an offer to purchase made by a US buyer. The general manager for the Supplier personally called multiple US wholesale buyers and received a top bid of \$44,000 CAD. The original purchase price of the Sierra was \$56,222 in July of 2017 and since the purchase the Sierra was driven over 200,000 kms.
- O. During the administrative review, the Supplier expressed that they have been in business since 1976 and are a high volume business with a limited previous enforcement history.
- P. The investigator remarked the Supplier was cooperative during the investigation.
- Q. During the administrative review, the Supplier committed to offering MJ, the same value of \$44,000 for the Sierra in an effort to resolve this matter to the satisfaction of MJ.
- R. The Supplier acknowledged the general conduct described in the AMVIC investigation and regrets engaging in the aforementioned activity.

NOW THEREFORE THIS UNDERTAKING WITNESSES THAT:

1. The Supplier acknowledges and admits that it failed to comply with the provisions of the CPA and ABR, and undertakes to the Director that the Supplier will make every effort to ensure that it does not engage in acts or practices similar to those described above.
2. The Supplier will undertake not to do or say anything or make representations, statements or claims that are not true, that might reasonably mislead or deceive a consumer as per Sections 6(4)(a) and 6(4)(g) of the CPA and Section 12(a) of the ABR.
3. The Supplier will undertake to reimburse MJ the sum of [REDACTED] the Supplier will provide AMVIC with proof that MJ has been reimbursed or notify AMVIC if MJ does not accept the offer [REDACTED].
4. The Supplier shall pay the sum of **\$1,000** to the Alberta Motor Vehicle Industry Council, an amount that represents a portion of the costs AMVIC has incurred investigating the matters herein. Such payment is to be made to AMVIC within **thirty (30) days** from the date of signing this Undertaking.
5. This Undertaking will remain in force,

Unless:
 - a. Terminated by the Director or varied with the consent of the Supplier;
 - b. Varied by an Order of the Judge of the Court of King's Bench where the Judge is satisfied that the circumstances warrant varying the provisions of the Undertaking; or
 - c. Terminated by an Order of the Judge of the Court of King's Bench where the Judge is satisfied that the act or practice that the Supplier has undertaken to refrain from engaging in was not unfair; however, in any such case, the termination or variance does not invalidate anything done under this Undertaking prior to termination or variance.
6. The Supplier acknowledges the Director may, upon breach of any term of the Undertaking, institute such proceedings and take such action under the CPA as they may consider necessary.
7. The Supplier acknowledges this Undertaking is a public document and will be maintained in the public record by the Director of Fair Trading (as delegated) as required by Section 157.1 of the CPA.

8. The Supplier acknowledges that they were advised by AMVIC, and are aware that they are entitled to seek independent professional advice regarding the signing of this Undertaking, and the Supplier acknowledges they are entering into this Undertaking voluntarily.

IN WITNESS WHEREOF the Supplier, has on the 20 day of March, 2023.

Shaganappi Motors (1976) Ltd.

PER: "original signed by"
Steve RAYTON
General Manager

ACCEPTED by the Director of Fair Trading on the 21 day of March, 2023.

PER: "original signed by"
Gerald Gervais, Registrar
Director of Fair Trading
(as delegated)