



ALBERTA MOTOR VEHICLE
INDUSTRY COUNCIL

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July 18, 2018

Served Personally
Administrative Review – 18-05-001

Administrative Penalty

AMENDED

305556 Alberta Ltd.
Operating as Prairie Auto Sales
PO Box 1929
Fort MacLeod, Alberta
T0L 0Z0

Attention: Scott Jessen

Dear Mr. Jessen

Re: 305556 Alberta Ltd. o/a Prairie Auto Sales Automotive Business Licence #B171728

As the Director of Fair Trading (as delegated), 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 Application Report prepared by the AMVIC investigations department (the "Application Report"). A copy of the Application Report and supporting documentation is attached as **Schedule "1"**. **As well as the information provided by Mr. Scott Jessen on July 12, 2018.**

Licencee Status

305556 Alberta Ltd. o/a Prairie Auto Sales (the "Supplier") holds an Automotive Business licence and carries on business as an automotive used and consignment sales business in the Province of Alberta.

History

- A. On December 19, 2008, AMVIC received a complaint from a consumer regarding a truck he had purchased from 305556 Alberta Ltd. o/a Prairie Auto Sales, which he believed to be an unsafe vehicle. The investigator spoke with the Supplier on numerous occasions and tried to rectify the issue through alternative dispute resolution however, the Supplier negated to remedy the issue.

AMVIC charged the Supplier under section 65(1)(h) of the *Traffic Safety Act* (TSA). The Supplier was convicted of contravening section 65(1)(h) of the TSA and received a fine of \$1,000.00 and ordered to pay restitution to the complainant in the amount of \$975.07.

- B. On July 12, 2016, AMVIC received another complaint from a consumer regarding a 2004 Nissan Murano LE, which had been sold to the consumer “as is” without a Mechanical Fitness Assessment (MFA). The Bill of Sale clearly indicates that the vehicle was sold as is and with no inspection, no warranty, and that the mileage was unknown. Section 2(1) of the CPA does not allow dealerships to sell automotive vehicles “as is”, nor is a dealer permitted to sell an automotive vehicle without an MFA. Dealerships who conduct themselves in such a manner are contravening section 65(1)(h) for the TSA and section 15(1) of the Vehicle Inspection Regulation (VIR). As a result of this complaint and the investigation conducted, the Supplier was charged with breaching section 65(1)(h) of the TSA. The Supplier plead guilty and was given a \$200.00 fine for selling a vehicle without a MFA.
- C. AMVIC sent Scott Jessen, the sole Director of 305556 Alberta Ltd. o/a Prairie Auto Sales a findings letter on May 13, 2017. This letter provides a summary of the inspection that was completed by Nina M. an AMVIC Industry Standards Officer (ISO) on April 28, 2017. In the findings letter the ISO reviewed six used deals and identified that out of the six used deals, four of them had issues with the MFAs. Two deals had MFAs that were signed by the client after the Bill of Sale date. The other two MFAs were missing crucial information: odometer reading, client signature, the date it was signed by the consumer, and the salesperson information. As per section 15(1) of the VIR, every used automotive sale requires a valid MFA which must be reviewed and signed by the consumer prior to entering into a contract to purchase a vehicle.
- D. On June 27, 2017, AMVIC received another complaint against the Supplier regarding a 2007 Nissan Murano. The consumer purchased the vehicle on June 2, 2017 and was not provided with an MFA before purchasing the 2007 Murano. The consumer called the Supplier twice before receiving the MFA in the mail ten days after the purchase date. The MFA that the consumer received in the mail did not have their signatures on it, and the date of completion had been altered. The original date on the MFA was June 18, 2015, which had been crossed off and replaced with January 5, 2017. Given the purchase date, the original MFA date of June 18, 2015 and the MFA with the date changed to January 15, 2017 were both older than 120 days and therefore expired. Upon visiting the dealership the Investigator spoke to Mr. Scott Jessen, who advised the Investigator that Lee Jessen ([REDACTED] /salesperson for the Supplier) takes full responsibility for altering the date on the MFA. Although, the dealership worked with the consumer to rectify the vehicles mechanical issues and has accepted full responsibility for their actions, there was a breach of legislation. The Investigator charged the Supplier under section 65(1)(h) of the TSA. As a result of this investigation, the Supplier plead guilty and was issued a \$200.00 fine.

Summary of Investigation (Case File 18-01-279)

- E. On January 23, 2018, AMVIC received a complaint from consumers who had purchased a 2006 Chevrolet Colorado LT Sport 4x4 from 305556 Alberta Ltd. o/a Prairie Auto Sales on November 9, 2017. When the consumers bought the vehicle they believed that the odometer was in kilometers. After they purchased the vehicle the consumers suspected the vehicles odometer was in miles. The auction disclosed the vehicle was previously in the United States but it did not

was in miles. The auction disclosed the vehicle was previously in the United States but it did not state whether the vehicles was in kilometers or miles on the bill of sale. The Car Proof report showed that the vehicle was in miles until it entered into Canada and it was then tracked in kilometers. The speedometer on the vehicle is in both kilometers and miles but the outer part of the speedometer is in kilometers, thus leading the consumer to believe the odometer would also be in kilometers. As a result of the initial complaint, it could not be determined if the vehicle was in miles or kilometers and therefore the investigator did not find a *Consumer Protection Act* violation regarding the odometer. However, during the course of the investigation it was found that there were two completed MFAs with regards to this vehicle. The MFA provided to the consumers contravened sections 15(1) and 16 of the Vehicle Inspection Regulation (VIR).

- F. When the consumer first submitted their complaint to AMVIC they attached a copy of the MFA they were provided by the Supplier, the MFA was dated December 31, 2016. AMVIC then received an MFA from the Supplier dated August 31, 2017. On April 28, 2018, the Investigator attended the Supplier's business location and spoke to Mr. Scott Jessen who admitted to the Investigator he had altered the dates on the MFA because it was past the 120 days. Scott Jessen explained to the Investigator that he altered the date on the MFA because they have a hard time getting MFAs completed due to their location in a small town. The original MFA dated December 31, 2016 was not in the file jacket at the dealership when the Investigator was there on April 24, 2018. When the Investigator asked Mr. Jessen how the complainants obtained a copy of the December 31, 2016 MFA, Mr. Jessen believed that they most likely received a copy from the fax they sent their insurance company. This is the fourth time that 305556 Alberta Ltd. o/a Prairie Auto Sales has been caught providing consumers with invalid MFAs.
- G. A Proposed Administrative Penalty was served personally (Attached as **Schedule "2"**) to the Supplier on June 8, 2018, requesting that 305556 Alberta Ltd. o/a Prairie Auto Sales provide their written representations to AMVIC no later than June 26, 2018. To date AMVIC has not received any written representations from the Supplier.
- H. On July 11, 2018, an Administrative Penalty was assessed and served personally on Mr. Lee Jessen at the Supplier's location. Attached as **Schedule "3"** is the Administrative Penalty and corresponding Affidavit of Service.
- I. On July 12, 2018, Mr. Scott Jessen emailed the Director of Fair Trading (as delegated) with an attached written representation dated June 25, 2018 and stated the written representation was sent to AMVIC on June 25, 2018. When asked to confirm how the information was provided to AMVIC, Mr. Scott Jessen then indicated the papers had been "sitting on [his] Secretary['s] desk". Attached as **Schedule "4"** is the written representation dated June 25, 2018. Attached as **Schedule "5"** is the July 12, 2018 email correspondence between Mr. Scott Jessen and AMVIC's Administrative Assistant to the Registrar.

Legislation

Traffic Safety Act ("TSA")

Equipment standards

Section 65(1)

Except as otherwise permitted under this Act, a person shall not do any of the following:

- (h) sell a used motor vehicle if that person is of a class described in the regulations or if that used motor vehicle is of a class or type described in the regulations unless
 - (i) the motor vehicle has passed the inspections and tests required by the regulations within the period of time preceding the sale prescribed by regulation and the person provides the buyer with an inspection certificate for the motor vehicle in respect of those inspections and tests, or
 - (ii) the person provides the buyer with a written statement containing the information prescribed by regulation respecting the motor vehicle;

Vehicle Inspection Regulation ("VIR")

Sale of used motor vehicle

Section 15(1)

Subject to subsection (2), a dealer in used motor vehicles shall, before entering into a contract to sell a motor vehicle, give to the buyer a used motor vehicle mechanical fitness assessment that contains the following:

- (a) a statement identifying the type of motor vehicle as a truck, motorcycle, bus, van, light truck, automobile or other type of motor vehicle;
- (b) a statement showing the make, model, year, vehicle identification number, odometer reading in kilometres or miles, licence plate number and province of registration of the vehicle;
- (c) the name and address of the dealer selling the vehicle and the name of the technician who issued the mechanical fitness assessment;
- (d) a statement that the mechanical fitness assessment expires 120 days after the date on which it was issued;
- (e) a statement certifying that at the time of sale the motor vehicle
 - (i) complies with the Vehicle Equipment Regulation (AR 122/2009), or
 - (ii) does not comply with the Vehicle Equipment Regulation (AR 122/2009) and containing a description of the items of equipment that are missing or do not comply with the Vehicle Equipment Regulation (AR 122/2009);
- (f) the signature of the technician who conducted the mechanical fitness assessment;
- (g) the date the mechanical fitness assessment was issued.

Expiry of mechanical fitness assessment

Section 16

A dealer's mechanical fitness assessment provided under section 15(1) for a used motor vehicle expires 120 days after the date on which it was issued.

Consumer Protection Act ("CPA")

Act Prevails

Section 2(1)

(1) Any waiver or release by a person of the person's rights, benefits or protections under this Act or the regulations is void.

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.

Automotive Business Regulation

General codes of conduct

Section 12

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

- (o) comply with any legislation that may apply to the selling, leasing, consigning, repairing, installing, recycling or dismantling of vehicles.

Analysis – Did the Supplier fail to comply with the provisions of the Vehicle Inspection Regulation and Automotive Business Regulation?

AMVIC received a consumer complaint regarding a 2006 Chevrolet Colorado LT Sport 4x4 which was purchased on November 9, 2017 from the Supplier. The consumer stated that he purchased a vehicle from 305556 Alberta Ltd. o/a Prairie Auto Sales which he understood to be in kilometers. However, after doing some research the consumer now believes the vehicle odometer is in miles. The complainant provided AMVIC with a bill of sale and MFA. The MFA is dated December 31, 2016. When AMVIC requested documents from the Supplier, the MFA that was provided to AMVIC was dated August 31, 2017. The Investigator attended the Supplier and spoke to Mr. Scott Jessen about the complaint and the MFA they provided. The Investigator asked Mr. Scott Jessen about the MFA dated August 31, 2017 and he admitted to the Investigator that he had altered the dates on the MFA because the original MFA was from December 31, 2016 and therefore no longer valid as it was dated outside the 120 days. Further, the MFA provided to the consumer did not have a statement indicating the MFA expires after 120 days after the date it was issued nor did it indicate if the vehicle was in miles or kilometers. These types of business practices are contrary to the legislation, which include section 15(1) of the VIR, and section 16 of the VIR. Section 12(o) of the ABR states that every business operator must comply with any legislation that may apply to the selling, leasing, consigning, repairing, installing, recycling or dismantling of vehicles. **Notwithstanding there was no breach found directly related to the odometer**, the Supplier has failed to comply with the VIR section 15 and 16 and has therefore further breached section 12(o) of the ABR.

In the written representation provided by the Supplier (see Schedule "4"), it was indicated that the vehicle had not been driven at all since the MFA was completed and the Supplier only provided an updated copy for the consumer to register their vehicle in a neighbouring town. The amount the vehicle is driven between the date the MFA was completed and the date the vehicle is sold does not excuse the fact that the MFA was expired. Further, the Supplier

provided no explanation as to why the MFA was missing the required line which discloses the MFA expires or why the MFA that was initially provided to the consumer does not indicate whether the vehicle was miles or kilometers, however the MFA provided to the consumer after the sale states the vehicle's odometer reading is in kilometers.

Since 2008, 305556 Alberta Ltd. o/a Prairie Auto Sales has been previously investigated by AMVIC three times for providing consumers with invalid MFAs. As a result of each complaint, AMVIC has investigated the Supplier and charged 305556 Alberta Ltd. o/a Prairie Auto Sales with contravening section 65(1)(h) of the TSA. As a result of the TSA violations, 305556 Alberta Ltd. o/a Prairie Auto Sales has been fined a total of \$1,400.00 in relation to three violation tickets (\$1,000.00, \$200.00 and \$200.00) and ordered to pay restitution in the amount of \$975.07.

An ISO did a routine inspection on April 28, 2017 and provided the Supplier with a findings letter which outlined that the MFAs reviewed during the inspection did not meet the requirements of the legislation. The ISO routine inspection was an educational opportunity in which the ISO discussed the findings and how to implement changes to ensure their business practices were brought into compliance with the legislation. The legislation clearly states that the Supplier must provide an MFA dated within 120 days preceding a sale and prior to entering to a contract to sell a motor vehicle. Additionally, it must indicate on the MFA form that it expires 120 days after the date on which it was issued.

Two months after the routine inspection was completed, the Supplier sold another vehicle without providing the consumers with an MFA prior to engaging in a contract to purchase. Once the consumers received a copy of the MFA ten days after the Bill of Sale date which is a breach of section 15(1) of the VIR. It was evident that the dates had been altered on the MFA. Based on the evidence provided by the Investigator the Supplier continues to blatantly contravene the legislation by entering into contracts with consumers to purchase vehicles without providing MFAs in a manner that complies with the legislative requirements he is obligated to comply with.

The Vehicle Inspection Regulation first came into force in 2006, the regulation is not recently passed legislation. Further, the Supplier has been charged regarding MFA compliance three times and AMVIC has completed an Industry Standards Inspection and provided education regarding MFA compliance. However, the Supplier has continued the non-compliant practices. There exists an onus on the Supplier to do their due diligence and ensure they are complying with the legislation which regulates the automotive industry. 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."

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 as outlined in section 127 of the CPA. When determining an appropriate enforcement measure, the Director of Fair Trading (as delegated) will consider several factors before making his decision to ensure

the level of enforcement is appropriate to the contravention. In the case of an Administrative Penalty, the 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.

This administrative penalty is taking into account only the breaches of the legislation found during the investigation regarding Case File 18-01-279. However, the continued non-compliance as outlined in the history cannot be ignored.

Action

In accordance with section 158.1(a) of the CPA and based on the above facts, I am requiring 305556 Alberta Ltd. operating as Prairie Auto Sales to pay an administrative penalty. This is based on my opinion that 305556 Alberta Ltd. operating as Prairie Auto Sales contravened section 15 and 16 of the VIR and section 12(o) of the ABR.

Taking into consideration the representations made by AMVIC's investigation department and **the written representations made by the Supplier**, I am imposing an administrative penalty to 305556 Alberta Ltd. o/a Prairie Auto Sales in the amount of **\$5,000.00.**

1. The seriousness of the contravention or failure to comply;
2. Whether or not the person who receives the notice of administrative penalty has a history of non-compliance;
3. Absence of intent of the business to become compliant: The previous history of non-compliance identified by AMVIC Inspectors and Investigators.
4. The degree of wilfulness or negligence in the contravention or failure to comply;
5. The maximum penalty under section 158.1(3) of the CPA of \$100,000;
6. **Volume of vehicles: the Supplier is a small business in a small community.**

The amount of the administrative penalty is \$5,000.00.

Pursuant to section 3 of the *Administrative Penalties (Fair Trading 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 *Consumer Protection Act* and further disciplinary action will be considered.

Section 179 of the CPA (formerly the *Fair Trading Act*) 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 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 (formerly the FTA), 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 (Fair Trading Act) Regulation*, the fee for appealing an administrative penalty is the lesser of \$1000 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 \$1,000.00.

Yours truly,

"original signed by"

Malcolm Knox
Director of Fair Trading (as Delegated)

/kl

cc: [REDACTED] Senior Manager of Investigations, AMVIC