

In The Matter of the Consumer Protection Act, RSA 2000, c. C-26.3

And In The Matter of an Appeal from the Decision of the Director of Fair Trading (as Delegated) made July 18, 2018 to Impose an Administrative Penalty Pursuant to s.158.1(1) of the Consumer Protection Act

Between:

305556 Alberta Ltd. operating as
Prairie Auto Sales

Appellant

-and-

Alberta Motor Vehicle Industry Council
("AMVIC")

Respondent

DECISION

Appeal Board: John Welbourn

Hearing: 3rd Floor Boardroom, 7015 Macleod Trail SW, Calgary, Alberta, on May 16, 2019.

Appearing for the Appellant:

Scott Jessen

Counsel for the Respondent:

Paula D. Hale, Esq.

Witnesses for the Appellant:

Lee Edward Jessen
Scott Jessen

Witness for the Respondent:

██████████

Preliminary Matters:

1. A preliminary meeting to discuss procedural matters was held with the parties by conference call on October 26, 2018. Dates for the appeal hearing were proposed, subject to witness availability. The schedule for disclosure of AMVIC records was agreed. The parties were advised that the evidence of all witnesses would be given under oath and not formally recorded, and that the appeal would be a *de novo* hearing.
2. The appeal hearing was set for December 17, 2018 but later adjourned by consent.

3. On commencing the hearing, the parties confirmed that:
 - a. The hearing room was satisfactory;
 - b. The Appeal Board had jurisdiction to hear the appeal and issue a decision in writing which would be final and binding on the parties;
 - c. The appeal hearing would not be formally recorded;
 - d. The evidence of each witness would be given under oath or affirmation.

Issue:

4. The Appellant appeals the July 18, 2018 decision of the Director of Fair Trading (as Delegated) to impose an administrative penalty of \$5,000.00. This followed an AMVIC investigation of a consumer's complaint that the odometer on a used motor vehicle purchased from the Appellant was calibrated in miles and not kilometers.
5. The Appellant does not dispute the facts. The Appellant believes the amount of the administrative penalty imposed is excessive.

Exhibits:

6. The following documents were entered as Exhibits during the hearing:

<u>Exhibit #</u>	<u>Tab</u>	<u>Document</u>
1	A	AMVIC Application Report - Investigations dated April 26, 2018
	A1	Mechanical Fitness Assessment dated Dec. 31, 2016
	A2	Mechanical Fitness Assessment dated Aug. 31, 2017
	A3	Bill of Sale dated November 8, 2017
	A4	██████████ dated March 9, 2018
	A5	AMVIC database search
	A6	AMVIC letter to Prairie Auto Sales dated May 13, 2017
	B	██████████ dated May 8, 2018
	C	Cost of Investigation calculation.

Facts & Evidence:

7. The Appellant holds an AMVIC automotive business license for a used and consignment automotive sales business in Fort MacLeod, Alberta. Scott Jessen is the sole director of the Appellant.
8. On November 8, 2017, the consumers purchased a 2006 Chevrolet Colorado LT Sport 4X4 (the "Vehicle") from the Appellant believing the odometer was calibrated in kilometers. AMVIC received a complaint on January 23, 2018 from the consumers who suspected the calibration was in miles not kilometers. AMVIC

investigated but did not find a violation regarding the odometer. However, the investigation found 2 Mechanical Fitness Assessments (the "MFAs") for the Vehicle for the same sale of the Vehicle to the consumers.

9. One MFA is dated December 31, 2016 which the consumers provided to AMVIC. The second MFA is dated August 31, 2017 which the Appellant provided during the investigation.
10. When the AMVIC investigator, [REDACTED] asked him about the discrepancy, Scott Jessen immediately acknowledged that he had altered the date from December 31, 2016 to August 31, 2017.
11. Mr. Jessen's excuse for the alteration was that Fort MacLeod is a small town with few technicians in the area authorized to issue mechanical fitness assessments. It is difficult to have fitness assessments performed or updated.
12. The Appellant acknowledges two prior Traffic Safety Act offences involving mechanical fitness assessments. The Appellant's guilty plea on each resulted in a \$200.00 fine. One offence occurred in 2016 and the other in 2017.
13. On April 28, 2017, an AMVIC industry standards officer inspected the Appellant's books and records to review compliance with the then Fair Trading Act. The officer's report to the Appellant is dated May 13, 2017 and details numerous issues with the Appellant's record keeping, advertising, and mechanical fitness assessments.

Argument:

14. AMVIC submits that the Appellant has demonstrated a pattern of wilful disregard for its statutory obligations as an automotive business license holder under the Consumer Protection Act. The Appellant intentionally altered the MFA knowing the MFA as originally dated had expired. Therefore the penalty in this instance must be more severe than those previously assessed.
15. Counsel noted that the proposed administrative penalty had been \$8,000.00 but was reduced to \$5,000.00 after consideration of the Appellant's submissions. Counsel also referred to prior AMVIC and appeal board decisions imposing administrative penalties.
16. The Appellant pleads that it is a small family business in a small town and cannot afford a penalty of this magnitude. It has always cooperated with AMVIC and tried to give good service to its customers.

Findings:

17. The Appellant admits the violations of s.65(1) of the Traffic Safety Act, s.15(1) and

s.16 of the Vehicle Inspection Regulation, and s.12(o) of Automotive Business Regulation. The MFA dated August 31, 2016 given to the consumers on November 8, 2017 was more than 120 days old and had therefore expired. It is an offence to sell a used motor vehicle if the vehicle has not passed the inspection and tests required by the regulations within the time prescribed by the regulations.

18. In considering the appropriate administrative penalty, the following factors have been considered:
- a. The Appellant admitted the violation immediately and has done so throughout.
 - b. The economic hardship on the Appellant of a \$5,000.00 penalty.
 - c. The Appellant's small business is family operated in a small town.
 - d. The Appellant has been twice convicted of similar offences within two years prior to this matter.
 - e. The Appellant was reminded in detail of its obligations to consumers and AMVIC by the AMVIC inspector's letter of May 13, 2017, less than 6 months prior to this matter;
 - f. The Appellant deliberately altered the date on the MFA although the alteration itself is not the basis of the violations.

Decision:

19. The Appellant violated s.65(1) of the Traffic Safety Act, s.15(1) and s.16 of the Vehicle Inspection Regulation, and s.12(o) of Automotive Business Regulation.
20. Pursuant to s.179(6) of the Consumer Protection Act, the administrative penalty is varied and replaced with an administrative penalty of \$1,000.00 to be paid within 30 days of the date of this decision.

Conclusion:

21. I confirm that I do not have any conflict with either party, counsel or any witness in this matter.

Signed at Calgary, Alberta on June 10, 2019.

"original signed by"

John H. Welbourn