

June 7, 2024

Administrative Review – 24-03-007
Served personally

Administrative Penalty

TRANS SELL MOTORS CORPORATION
4410 127 STREET SW
EDMONTON, AB
T6W 0J2

Attention: Yusuf Hussein

Dear Yusuf Hussein:

Re: Trans Sell Motors Corporation – Provincial Automotive Business Licence No. B2032386

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 April 30, 2024. The Supplier provided written representations via email dated May 28, 2024 (attached as Schedule “C”), in response to the Proposed Administrative Penalty, which I have also taken into consideration.

Licensee Status

Trans Sell Motors Corporation (the “Supplier”) holds an AMVIC business licence and carries on the business activities of wholesale sales in the Province of Alberta.

History

The Supplier’s business licence was initially issued on Aug. 7, 2020 for the business activities of retail, new and used sales, and wholesale sales transactions. The Supplier advised AMVIC of a change in their business activities and as of Sept. 25, 2020 only has held an AMVIC business licence for the designated business activity of wholesale sales. The Supplier allowed their AMVIC business licence to expire on Aug. 31, 2022 and it was not issued again until July 28, 2023. Since July 28, 2023, the Supplier has been licensed with AMVIC for the business activity of wholesale sales only.

Mr. Yusuf Hussein is the owner and sole director for the Supplier, and only employee and salesperson. During the administrative review, the Supplier advised that last year they sold approximately 80 motor vehicles.

Preliminary Matters

At the start of the administrative review, Mr. Hussein asked if the review could be rescheduled, however did not provide any valid reasons to warrant the Director to grant his request.

The Notice of Administrative Review dated March 20, 2024 expressly states:

*"...You may submit, in writing, to AMVIC, any relevant information regarding the issue stated above at least **five days** prior to the administrative review. Please send any submission to the AMVIC address shown on this letterhead. The information in writing may be provided to AMVIC by mail or e-mailed to director@amvic.org; however the onus is upon you to ensure that the information is received in a timely fashion by AMVIC. Additional information will be considered before proposed action is taken..."*

The Supplier did not provide any written representations to the Director in advance of the scheduled administrative review nor did he mention he would like an adjournment to AMVIC's employee when AMVIC contacted him prior to the administrative review for the best telephone number to reach him at for the hearing. Mr. Hussein had ample time and opportunity to request an adjournment, or ask questions of the AMVIC employee who contacted him for his telephone number prior to the administrative review and chose not to do so.

Mr. Hussein further asked the Director if he needed a lawyer. The Director advised Mr. Hussein he could not provide instruction to him on whether or not he needed a lawyer and that decision on his part should have been made in advance of the scheduled administrative review.

The Notice of Administrative Review further states:

"...I encourage you to participate in the administrative review. AMVIC will not make a decision on the proposed administrative action until after the review. However, if you choose not to make written representations or participate in the administrative review, the review will proceed accordingly without your participation."

Summary of Investigations

Case File 23-08-134

1. In August of 2023, AMVIC received a complaint alleging that a consumer had been misled by the Supplier regarding the condition of the vehicle he purchased and other concerns in relation to the transaction.

2. On July 7, 2023, a consumer (“AS”) purchased a 2017 Mitsubishi Lancer (the “Lancer”) that he saw advertised privately on Facebook Marketplace by Mr. Yusuf Hussein, owner and director for the Supplier.
3. In his consumer complaint to AMVIC AS stated:
 - He found the Lancer advertised by Mr. Hussein on Facebook Marketplace on June 27, 2023 and there were no problems with the Lancer listed in the advertisement.
 - He made arrangements to meet Mr. Hussein at the business location of the Supplier located at 12151 Fort Road NW on June 28, 2023 at 7:30 p.m.
 - He was told the Lancer was only in one minor accident and that there was nothing else wrong with the vehicle.
 - He negotiated a price of \$13,000.
 - He later discovered from a Carfax report that the Lancer had a re-built status and therefore feels as though he over paid for the vehicle.
 - Mr. Hussein provided him with a bill of sale (“BOS”) in the name of the Supplier and listed the “*Payment Terms*” on the BOS as cash even though he provided Mr. Hussein with a bank draft.
 - Despite texting and calling the Supplier, the Supplier has not rectified the situation.
4. The AMVIC investigation identified that:
 - At the time of the consumer transaction the Supplier was not AMVIC licensed and had never been a registered owner of the Lancer, therefore the Lancer was not his personal vehicle and he sold it to AS while unlicensed to do so. As Mr. Hussein was not the registered owner of the vehicle nor was he licensed by AMVIC to conduct retail sales, Mr. Hussein and the Supplier curbed the Lancer. As per AMVIC’s website “*curbers are illegal sellers operating without the required AMVIC sales licence.*”
 - The Supplier only became AMVIC licensed on July 28, 2023, 21 days after the date of the consumer transaction. Additionally, when the Supplier did become licensed with AMVIC again it was for the business activity of wholesale sales only.
 - A private BOS was utilized in the transaction and lists one of the conditions as “*sold as is*” which is contrary to Section 2 of the CPA.
 - The AMVIC investigator confirmed the Lancer had been written off in a vehicle collision by the previous owner. An insurance company confirmed the Lancer was declared a loss and it was sold to Edmonton Salvage.
 - A Carfax obtained by AS on Aug. 9, 2023 revealed the Lancer was branded, “*Salvage*” on Jan. 17, 2023 and on May 12, 2023 it was declared “*Rebuilt/Rebuildable*” (see Schedule “**A**”; Exhibit G). In addition, the Carfax revealed collisions from Dec. 9, 2020 and Dec. 28, 2022 with the claim amounts of \$3,783.00 and \$12,846.00 respectively.
 - AS advised the AMVIC investigator that he is driving the Lancer sparingly as he cannot afford to repair it.
 - Mr. Hussein actively advertises many vehicles for sale under the Supplier’s name on the social media platforms Instagram and Facebook Marketplace.

- On May 15, 2023, Mr. Hussein was advised by AMVIC's licensing department that his application for a business licence was refused as he had not submitted the required proof of municipal approval. The email further advised Mr. Hussein that he could not be operating his business as he did not have the required AMVIC licence (see Schedule "A"; Exhibit N).
 - On July 26, 2023, Mr. Hussein spoke to an AMVIC licensing advisor and advised that he would only be conducting wholesale sales.
5. AMVIC received a Supplier response received from the Supplier on Oct. 30, 2023 in relation to the consumer complaint. The Supplier response stated:
- AS came with his own mechanic and did his own inspection.
 - AS was happy with the purchase and there were no issues.
 - AS started harassing him online and sending him threatening messages including blackmailing him.

Supplier's Representations during the Administrative Review – Case File 23-08-134

6. During the administrative review the Director had a number of questions for the Supplier and the Supplier advised of the following information:
- Mr. Hussein purchased the Lancer when it was new about seven years ago in a private sale for \$10,000.
 - That there was nothing wrong mechanically with the Lancer and he spent approximately \$4,000 in maintenance costs on the Lancer over the year but the car had been sitting for awhile.
 - He did not make any profit in the sale of the Lancer.
 - Mr. Hussein has been looking for the records for the last three months trying to track them down and has found most of them, however could not explain why he did not furnish the records to the AMVIC investigator when requested or to the Director in advance of the scheduled administrative review.
 - Mr. Hussein stated he did not do anything wrong.
 - Mr. Hussein stated that he told AS the Lancer was re-built and showed him the release form from the inspection that he did.
 - Mr. Hussein maintained that he went above and beyond in the treatment of AS and that AS had an opportunity to take the Lancer for an inspection to his own mechanic.
 - Mr. Hussein denied curbing the vehicle, however did not know what a curber was and the Director had to explain it to him.
 - Mr. Hussein advised that he treats his customers honestly and that AS was lying in his statement.

Case File 23-10-057

7. In October of 2023, AMVIC received a complaint alleging that a consumer had responded to an individual's Facebook advertisement in regards to a motor vehicle for sale, which turned out to be

the Supplier and was misled by the Supplier regarding the condition of the vehicle that was purchased.

8. On Aug. 7, 2023, the consumer ("CL") purchased a 2009 Mercedes Benz C230 (the "Mercedes") for a purchase price of \$6,000.

9. CL's consumer complaint to AMVIC can be summarized as follows:

- CL saw the Mercedes advertised on Facebook and assumed it was a private sale because at no time did the seller reveal he was an automotive business.
- It was not until he reviewed his private BOS did he realize he was purchasing the Mercedes from the Supplier.
- CL test drove the Mercedes on Aug. 6, 2023 and noticed a knocking sound coming from the motor. When he brought it to the attention of Mr. Hussein, Mr. Hussein guaranteed him that the Mercedes had been serviced by his mechanic and that the knocking sound was not coming from the motor.
- Mr. Hussein told CL that he had a shop estimate for the issue and the estimated cost to repair it was \$800.
- Mr. Hussein was supposed to provide him with the estimate but never did.
- Mr. Hussein stopped returning CL's messages and phone calls.
- CL took the Mercedes to a mechanic who confirmed a knock in the motor.
- CL attended the Supplier on Sept. 22, 2023 to inform Mr. Hussein of the issue with the motor, and Mr. Hussein told him he will pass the information onto his mechanic and figure something out.
- CL never heard back from Mr. Hussein.

10. The AMVIC investigation revealed that:

- The Supplier was not licensed with AMVIC for retail sales and therefore is not authorized to sell vehicles directly to consumers. The Supplier and Mr. Hussein were licensed with AMVIC at the time of the sale for wholesale sales only, which allows the Supplier to sell vehicles to an auction or other automotive businesses.
- The Mercedes was never privately registered to Mr. Hussein.
- A private BOS was used in the consumer transaction and lists the conditions as "sold as is" which is contrary to Section 2 of the CPA.
- The vehicle mileage for the Mercedes is listed as 158 kms on the private BOS which is inaccurate.
- Mr. Hussein was fully aware he was not allowed to sell to vehicles to consumers as per his previous interaction with another AMVIC investigator and communication with AMVIC's licensing department.
- CL was not provided with a Mechanical Fitness Assessment ("MFA") prior to entering into a consumer transaction as required by Section 15(1) of the Vehicle Inspection Regulation ("VIR").

- On Oct. 6, 2023, CL took the Mercedes to a repair facility (“SLAR”) in Edmonton who informed him he needed to have the engine in the Mercedes replaced at a significant cost. This was confirmed by the AMVIC investigator.
- CL has limited use of the Mercedes as he cannot afford to replace the engine.

11. The AMVIC investigator made requests in writing to the Supplier on Oct. 20, 2023 and Nov. 2, 2023 for the Supplier to provide the acquisition documents for the Lancer and the Mercedes prior to selling them to the consumers.

Supplier’s Representations during the Administrative Review – Case File 23-10-057

12. During the administrative review the Director had a number of questions for the Supplier in relation to this consumer transaction and the following information was provided by Mr. Hussein:

- Mr. Hussein maintains he did not do anything wrong and that there were no mechanical issues with the Mercedes.
- CL had his own inspection done and he gave CL the full estimate from a third party Supplier (“BA”).
- CL had the Mercedes for a full day and is lying in his statement.
- That the reason he did not provide the records to the AMVIC investigator was because the investigator was not taking his word.
- He purchased the Mercedes in a private sale about two years ago and he paid \$10,000.
- Despite what the AMVIC investigator stated in the Application Report he deleted his Facebook account and took down all of his advertisements.
- Mr. Hussein feels that this is an “attack” and he did not do anything wrong to these two consumers.

13. During the administrative review, the Director expressed his concern with the two consumer transactions and requested the Supplier provide reasons as to why the Director should not cancel his business licence. Mr. Hussein stated:

- He did not want his licence cancelled and would like the opportunity to rectify the situation or something.
- He treats his customers honestly.

14. The Supplier provided written representations via email dated May 28, 2024 (see Schedule “C”), in response to the Proposed Administrative Penalty. The written representation from the Supplier stated:

“I would like to either take a suspension, The [sic] proposed penalty would bankrupt me and I would like to ask for leniency. I have applied for a retail license [sic] and am waiting on the approval. I do have additional documents to send to the amvic investigator, i [sic] will be sending it tomorrow.”

Legislation

Automotive Business Regulation

New Classes of Licence

Section 3

(7) A person who holds an automotive business licence is not authorized to carry on any class or classes of activities that are not specified on the licence.

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.

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.

Vehicle history information

Section 31.1

(1) A business operator engaged in automotive sales must disclose the following information in accordance with subsection (2), on the basis of information the business operator knew or ought to have known:

- (a) whether the vehicle has been bought back by the manufacturer under the Canadian Motor Vehicle Arbitration Plan;
- (b) whether the vehicle has sustained damage caused by fire;
- (c) whether the vehicle has sustained damage caused by immersion in liquid to at least the level of the interior floorboards;
- (d) whether the vehicle has been used as a police car or an emergency vehicle;
- (e) whether the vehicle has been used as a taxi cab or a limousine;
- (f) whether the vehicle has been previously owned by a rental vehicle business or used as a rental vehicle on a daily or other short-term basis;
- (g) whether the vehicle has, at any time, been assigned a status in one of the following categories under the Vehicle Inspection Regulation (AR 211/2006) or an equivalent status under the laws of another jurisdiction:
 - (i) salvage motor vehicle;
 - (ii) non-repairable motor vehicle;
 - (iii) unsafe motor vehicle;
- (h) whether the vehicle has been damaged in an incident or collision where the total cost of repairs fixing the damage exceeded \$3000 and, if the repairs were carried out by the business operator, the total cost of the repairs;

- (i) whether the vehicle was registered in any jurisdiction other than Alberta immediately before it was acquired by the business operator and, if so,
 - (i) the name of the jurisdiction in which the vehicle was previously registered,
 - (ii) whether the vehicle was required to be inspected prior to registration in Alberta, and
 - (iii) whether the vehicle passed or failed any required inspections.
- (2)** The business operator must disclose the information required under subsection (1) in a clear and legible manner (a) in any online advertisement for the vehicle, (b) on any sales tag affixed to the vehicle, and (c) in writing to the consumer before purchase.

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.

Receipt of information

Section 31.3

A business operator engaged in automotive sales must not enter into a bill of sale with a consumer unless the business operator has obtained written confirmation from the consumer that the consumer has received the information required under section 31.1.

Vehicle Inspection Regulation

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.

Consumer Protection Act

Act prevails

Section 2

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

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.

(3) It is an unfair practice for a supplier

(a) to enter into a consumer transaction if the supplier knows or ought to know that the consumer is unable to receive any reasonable benefit from the goods or services;

(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;

Licence required - designated businesses

Section 104

(1) No person may engage in a designated business unless the person holds a licence under this Act that authorizes the person to engage in that business.

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 two consumer complaints in which the Supplier curbed one vehicle and engaged in unlicensed business activity in the second consumer transaction, AMVIC case files 23-08-134 and 23-10-057.

A. Unable to Receive Benefit (CPA Section 6(3)(a))

On a balance of probabilities based on the evidence put forward by AMVIC investigations there is insufficient evidence to support the Supplier knew or ought to have known the consumers were unable to receive any reasonable benefit from the vehicles purchased as per Section 6(3)(a) of the CPA.

In the opinion of the Director, there is evidence to support that through the Supplier's words and actions, unfair practices were committed as per Section 6 of the CPA in both consumer transactions. Two consumers unknowingly responded to and purchased vehicles that were advertised on Facebook Marketplace, and believed they were purchasing personal vehicles from a private citizen and not the Supplier. It is also in the opinion of the Director that AS and CL were misled in regards to the condition of the motor vehicles they purchased, and are not receiving reasonable benefit from the vehicles due to the mechanical failings. However, there is insufficient evidence before the Director to demonstrate the Supplier had knowledge that the consumers would be unable to receive reasonable benefit from the vehicles purchased. There are no acquisition documents as to how or when the Supplier purchased the Lancer or the Mercedes.

B. Unlicensed Business Activity (CPA Section 104(1)/ABR Section 3(7))

Case file 23-08-134

At the time of this consumer transaction the Supplier was not AMVIC licensed and was never the registered owner of the Lancer, therefore the Supplier and Mr. Hussein curbed the Lancer.

This consumer transaction took place on July 7, 2023. The Supplier had allowed their business licence to expire on Aug. 31, 2022. The Supplier became AMVIC licensed on July 28, 2023, 21 days after the date of the consumer transaction. The Supplier only holds an AMVIC business licence for the business activity of wholesale sales. It further concerns the Director that the Supplier engaged in the designated business activity while unlicensed, less than one month after being advised by AMVIC's licensing department that his application for a business licence was refused due to his failure to meet the licensing requirements and that he could not be operating as he did not have the required AMVIC business licence.

The Director found it particularly concerning that Mr. Hussein initially denied curbing the Lancer during the administrative review and did not know what a curber is despite previously having successfully passed the Salesperson Registration Course. The Director had to explain to Mr. Hussein what a curber was.

Case file 23-10-057

At the time of this consumer transaction the Supplier was AMVIC licensed, however only for the designated business activity of wholesale sales. Businesses that are licensed for wholesale sales only are not allowed to sell vehicles directly to the public. The Supplier and Mr. Hussein were never the registered owner of the Mercedes.

It is also concerning to the Director that the Supplier and Mr. Hussein engaged in the unlicensed business of selling vehicles retail to the public, less than two weeks after he spoke with AMVIC's licensing department and advised that he would only be doing wholesale sales.

Based on the evidence before me, on a balance of probabilities, I find the Supplier has breached Section 104(1) of the CPA.

C. Duty to Maintain Records (132 CPA and 9 ABR)

It is imperative that the Supplier creates and maintains accurate records. 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 legislative requirements.

Major issues that the Director found in reviewing the Supplier's documents include but are not limited to the lack of disclosure of MFAs, the use of a private BOS and its completion, and the failure to disclose vehicle history information. The Director is further concerned with terminology the Supplier used on the private bills of sale, "sold as is". As per Section 2 of the CPA, a consumer cannot waive their rights.

The legislation is very clear, that being negligent in keeping records is not only an offence under the CPA but in addition, if a provision of the document is ambiguous, the provision must be interpreted against the Supplier in accordance with Section 4 of the CPA. The Supplier is vicariously liable for all records created and maintained by an employee or agent acting on behalf of the Supplier in the course of completing the Supplier's licensed business activities.

It further concerns the Director that the Supplier failed to produce and provide their records to the AMVIC investigator. The AMVIC investigator made requests in writing to the Supplier including Oct. 20, 2023 and Nov. 2, 2023 for the Supplier to provide the acquisition documents for the Lancer and the Mercedes prior to selling them to the consumers. To date the Supplier has not provided AMVIC with the requested documents.

During the administrative review, Mr. Hussein stated that he had been looking for the records for the last three months trying to track them down and has found most of them, however could not explain why he did not furnish the records to the AMVIC investigator when requested or to the Director in advance of the scheduled administrative review. At one point in the administrative review, Mr. Hussein made comments that the reason he did not provide the records to the AMVIC investigator was because the investigator was not taking his word.

A recent Service Alberta Appeal Board rendered a decision (attached as Schedule "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.

Based on the totality of all of the issues and concerns with the Supplier's paperwork on a balance of probabilities, the Director finds that the Supplier is in contravention of Section 132 of the CPA and Section 9 of the ABR.

D. Other Considerations

The Director finds it particular concerning in regards to other possible egregious breaches on the part of the Supplier in only two consumer transactions including but not limited to unfair practices, failing to provide an MFA prior to entering into a consumer transaction, bill of sale issues and failure to provide vehicle history information which was discussed during the scheduled administrative review. In addition, the comments made by Mr. Hussein during the administrative review in the opinion of the Director were particularly concerning.

Mr. Hussein described the AMVIC investigator as attacking him, that he did nothing wrong in the treatment of the two consumers and there was nothing wrong mechanically with the Lancer or the Mercedes. Several times during the administrative review the Director had to explain to Mr. Hussein that he was not licensed to sell vehicles to consumers at the time of either transaction and he therefore sold both the Lancer and the Mercedes without the required AMVIC business licence to do so.

According to Mr. Hussein he purchased the Lancer when it was new about seven years ago in a private sale for \$10,000 and that there was nothing wrong mechanically with the Lancer. Mr. Hussein further advised that since owning the Lancer he has spent approximately \$4,000 in maintenance costs over the years but the car has been sitting for awhile. The Carfax dated Aug. 9, 2023 provided to the AMVIC investigator by AS (Schedule "A"; Exhibit "G") provides evidence that the Lancer had prior history that would be concerning to an unsuspecting buyer. Mr. Hussein did not provide any evidence to support that he purchased the Lancer seven years ago nor any evidence of repairs completed on the Lancer.

The Carfax lists that on Dec. 9, 2020 the Lancer was involved in a collision damage amount of \$3,783 and on Dec. 28, 2022 in another collision in the amount of \$12,846. The Lancer was used as a rental vehicle as noted on Dec. 12, 2017, was branded salvage Jan. 17, 2023 and rebuilt on May 12, 2023. Despite owning the Lancer for seven years, the Lancer has never been registered to Mr. Hussein. Mr. Hussein could not provide evidence on how he acquired the Lancer. If Mr. Hussein has owned the Lancer for seven years, it would have been in his possession during the collisions on Dec. 9, 2020 and Dec. 28, 2022. The Lancer would have also been in his possession when it was branded salvage on Jan. 17, 2023 and branded rebuilt on May 12, 2023. Therefore, Mr. Hussein would have known about the previous history of the Lancer, yet he did not disclose the information to the consumer.

In the Notice of Administrative Review, notice was not provided to the Supplier as per Section 128 of the CPA in regards to all of the other apparent breaches of legislation (Section 6(4)(a) CPA, Section 12(o), 31.1, 31.2 and 31.3 of the ABR, and Section 15(1) of the VIR) which have been discussed above. Given notice was not provided for the relevant legislation, the Proposed Administrative Penalty is only taking into consideration the breaches set out above where appropriate notice was given to the Supplier in accordance with Section 128 of the CPA.

There exists an onus on the Supplier to do their due diligence and ensure they are complying with the legislation that governs the regulated industry they have chosen to be a member of. 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 a 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.”

The Supplier’s business practices discussed above leverages the Supplier’s knowledge and position, and does not foster a level playing field between the consumer and the Supplier, leading to financial harm to consumers. In the opinion of the Director, engaging in unlicensed business activity is a serious breach of the legislative framework and undermines the hard work of the automotive industry members who abide by the licensing requirements and legislation.

The aggravating factors in this matter include the resulting financial impact adversely affecting the consumers; the degree of willfulness or negligence in the contraventions of the Supplier and the economic benefit derived by the Supplier. There are no mitigating factors that the Director took into consideration.

This Administrative Penalty is taking into account the number and seriousness of the contraventions of the legislation; and the aggravating factors listed above.

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 Director considered whether other enforcement actions would be appropriate in this circumstance. The Director considered either imposing conditions on the business licence of the Supplier or entering into an Undertaking with the Supplier. However, in the opinion of the Director, neither of these enforcement actions would adequately protect the public as the Director is not satisfied the Supplier has ceased the contraventions.

During the administrative review, the Supplier expressed a desire to remain in the automotive industry and an opportunity to rectify the deficiencies, however did not take responsibility for the legislative breaches. Last year, the Supplier sold 80 motor vehicles.

An Administrative 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. In the opinion of the Director, the contraventions are serious, there was substantial harm to the consumers and therefore a significant Administrative Penalty is warranted.

Action

In accordance with Section 158.1(a) of the CPA and based on the above facts, I am requiring that Trans Sell Motors Corporation pay an Administrative Penalty. This is based on my opinion that Trans Sell Motors Corporation contravened Sections 104(1) and 132 of the CPA, and Section 9 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 **\$22,500**.

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 impact and financial harm on the persons adversely affected by the contraventions or failure to comply;
2. The seriousness of the contraventions or failure to comply;
3. The degree of willfulness or negligence in the contravention or failure to comply;
4. The maximum penalty under Section 158.1(3) of the CPA of \$100,000; and
5. The deterrent effect of the penalty.

The amount of the Administrative Penalty is \$22,500.

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, Registrar
Director of Fair Trading (as Delegated)

GG/kl
Encl.

cc: [REDACTED] Senior Manager of Investigations, AMVIC