

In the Matter of an Appeal by Country Hills Chrysler Dodge Jeep Ram Ltd.
pursuant to Section 179 of the *Consumer Protection Act*, RSA 2000, c C-26.3

AND

In the Matter the Decision by the Alberta Motor Vehicle Industry Council to Issue an
Administrative Penalty of \$15000 to Country Hills Chrysler Dodge Jeep Ram Ltd. For
Contravening Section 6(4)(a) of the *Consumer Protection Act*, RSA 2000, c C-26.3 and sections
11(2)(l) and 31.2 of the *Automotive Business Regulation*, Alta Reg 192/1999.

DECISION OF THE APPEAL BOARD

Appeal Board: Christopher Davison (Chair)

Kent Pallister (Board Member)

Jamie Tiessen (Board Member)

<u>Counsel:</u>	Jason Bender:	For the Appellant Country Hills Chrysler Dodge Jeep Ram Ltd.
	Ashley Reid:	For the Respondent, the Director of Fair Trading (as delegated) ("the Director")

NATURE OF APPEAL

1. On February 10, 2025, the Registrar of Alberta Motor Vehicle Industry Council ("AMVIC"), acting as the Director, rendered a decision to impose a \$15,000 administrative penalty ("AP") on Country Hills Chrysler Dodge Jeep Ram Ltd. ("Country Hills") pursuant to s. 158.1(1) of the *Consumer Protection Act*, RSA 2000, c C-26.3 ("CPA").
2. In summary, the Director found that Country Hills had violated the advertised pricing requirements found in s. 11(2)(l) of the *Automotive Business Regulation*, Alta Reg 192/1999 ("ABR") by advertising a vehicle for approximately \$22,000 lower than the sale price. The Director found that Country Hills had deceived consumers by including a misleading disclaimer in their online advertisements, thus violating s. 6(4)(a) of the CPA. The Director

also found that Country Hills's bill of sale did not contain all of the information required by section 31.2 of the *ABR*. The Director therefore imposed a penalty of \$15,000.

3. Country Hills has appealed the Director's decision.

DECISION

4. For the following reasons, the Appeal Board ("Board") finds:
 - a. The breach of s. 11(2)(l) of the *ABR* is established on a balance of probabilities;
 - b. The breach of s. 6(4)(a) of the *CPA* is established on a balance of probabilities;
 - c. The breach of 31.2 of the *ABR* is established on a balance of probabilities;
 - d. In consideration of the breaches that have been established, the Board varies the Director's February 10, 2025 decision. We impose an administrative penalty of \$20,000.
 - e. No decision is made as to costs.

JURISDICTION AND STANDARD OF REVIEW

5. On February 10, 2025, the Registrar of AMVIC acting as the Director imposed an AP on Country Hills under s. 158.1(1) of the *CPA*.
6. On March 7, 2025, Country Hills appealed this decision pursuant to s. 179(1)(e) of the *CPA*. They provided a letter to the Director which we consider a Notice of Appeal as required under s. 4 of the *Appeal Board Regulation*, Alta Reg 195/1999 ("*APBR*").
7. On March 26, 2025, the Board was appointed pursuant to s. 179(2) of the *CPA*.
8. On May 23, 2025, the Board provided a Notice of Hearing to the parties, pursuant to s. 6 of the *APBR*.
9. This appeal is a new trial of the allegations raised in the Director's decision (s. 179(8) of the *CPA*). This means, at all times, the onus is on the Director to prove the allegations found in the Director's decision. The Board will make all findings of fact regarding these breaches based on the evidence before us; for our purposes, the Director's findings are nothing more than allegations.
10. The Board may vary, quash, or confirm the Director's decision (s. 179(6) of the *CPA*).

ISSUES

11. Issue (1) Does the evidence establish a breach of s. 11(2)(l) of the *ABR*?
12. Issue (2) Does the evidence establish a breach of s. 6(4)(a) of the *ABR*?
13. Issue (3) Does the evidence establish a breach of s. 31.2 of the *ABR*?
14. Issue (4) Given the breaches established, should the Board confirm, vary or quash the administrative penalty of \$15,000?

ANALYSIS

Issue (1) Does the evidence establish a breach of s. 11(2)(l) of the *ABR*?

Relevant Legislation

15. Section 11(2)(l) of the *ABR* states that a business operator must ensure that every advertisement for an automotive business includes in the advertised price for any vehicle the total cost of the vehicle, including, but not limited to, all fees and charges such as the cost of accessories, optional equipment physically attached to the vehicle, transportation charges and any applicable taxes or administration fees, but not including GST or costs and charges associated with financing.
16. Section 166 of the *CPA* states that any act or omission by an employee of a supplier is deemed to be an act or omission of the supplier itself if the employee is in the course of their employment.

Key Submissions

17. The Director provided the following key submissions:
 - a. The complainant [REDACTED] purchased a vehicle on June 10, 2023 for \$104,995. There was a June 7, 2023 advertisement \$82,670 for the same vehicle. They paid more than \$22,000 above the advertised price. In cross examination, the dealer-principle of Country Hills Jason Bender ("Bender") agreed that the price on the advertisement did not include a number of fees and charges

that it should have. For example, the advertised price did not include the tire fee, the admin fee, luxury tax, the wheel nuts, etc.

- b. Country Hills therefore breached s. 11(2)(l) of the *ABR*.
- c. The explanations provided by Country Hills do not provide a defence to this breach. Error is not an excuse at law.
- d. Country Hills has also failed to establish due diligence defence. In order to establish due diligence, Country Hills would have to establish on a balance of probabilities: (1) they believed a mistaken set of facts which if true render actions innocent or (2) they took all reasonable steps to avoid any contravention.
- e. There was no evidence provided that Country Hills believed any set of facts that would render their actions innocent. Bender's belief that his staff followed correct procedure as dictated by AMVIC is insufficient. Bender's admission that his staff member made an error is insufficient. Otherwise, Country Hills provided no evidence of what steps they took to prevent this breach from occurring.

18. Country Hills provided the following key submissions:

- a. The complainant [REDACTED] was very knowledgeable consumer and had previous experience in the automotive industry. He knew the price, he knew the Manufacturer's Suggested Retail Price ("MSRP"), he knew the market adjustment, and he chose to purchase the vehicle anyways.
- b. On June 6, 2023, when [REDACTED] paid a deposit, he knew everything about the purchase. On June 7, 2023 there was an advertisement; on this day there was no request for refund of a deposit or any sale made. The advertisement was removed approximately June 7 to 9, 2023.
- c. The advertisement was made by Country Hills in error. It was not a real advertisement. That vehicle would never have been sold for that price.
- d. On June 10, 2023, when the purchase occurred, there was full disclosure to the [REDACTED] about the purchase. They had the option to walk away from the sale but chose not to. This was an investment vehicle. [REDACTED] knew he could have contacted AMVIC if he had any concerns, he knew he could have walked away as he

had not signed anything yet. In reality, [REDACTED] purchased the vehicle on June 10, and took deliver of it on that day.

- e. [REDACTED] made accusations but there were no interviews of anyone at the dealership who could speak to the sale, not the salesperson nor the finance manager. At the hearing we never heard from the actual purchaser, [REDACTED]. We should not rely on [REDACTED] testimony alone to establish what happened.

Board's Decision

19. The Board finds that, on a balance of probabilities, Country Hills breached s. 11(2)(l) of the ABR. We find that the evidence does not establish any valid defence to this breach. We base these findings on the totality of the evidence including the following evidence and reasoning:

- a. [REDACTED] testified that he was looking to purchase a special edition 2023 Dodge challenger. On June 3, 2023, he found a Country Hills advertisement online which stated "contact us for price." A picture of this advertisement that [REDACTED] recorded is found in exhibit D3 and exhibit D5.
- b. [REDACTED] phoned Country Hills, spoke to a sales manager, and was provided with the price of \$104,995. This is corroborated by the offer to purchase document found in exhibit D3. In cross examination, [REDACTED] was presented with the offer to purchase document; he testified he had never seen it before. Bender testified that the offer to purchase shows the signature of sales manager Jazz Kanda, who must have filled the document out after the phone conversation with [REDACTED] on June 3, 2023.
- c. [REDACTED] testified he was interested in purchasing the vehicle so he provided deposits via credit card on June 3, 2023 over the phone, and via debit card on June 6, 2023 after viewing the vehicle at the dealership. The deposits totalled \$10,000. This is corroborated by deposit receipts found in exhibit D3. [REDACTED] stated at the time he submitted these deposits he was told they were refundable. He did not remember the name of the sales person who he spoke to, perhaps Roger.

- d. [REDACTED] testified that on June 7, 2023, he was told by a coworker that the same vehicle he intended to purchase was advertised for a lower price on-line. [REDACTED] found this advertisement on-line, confirmed it was for the same vehicle via VIN number, and confirmed it was for a lower price. A picture of this advertisement that [REDACTED] recorded is found in exhibit D3 and exhibit D5. The advertisement shows a price of \$82,670.
- e. [REDACTED] called Country Hills, and spoke to a salesperson who told him this was a pricing mistake. The salesperson said they would see what they could do. [REDACTED] had already made plans to attend the dealership days later and he assumed they would then talk about the price and advertisement again. He did not recall the name of the sales manager he spoke to over the phone on June 7.
- f. [REDACTED] testified that the \$82,670 advertisement was on the Country Hills website for a day or two. He knew for sure it was taken down as of June 10, 2023.
- g. [REDACTED] testified that he [REDACTED] attended the dealership on June 10, 2023. They asked about pricing; they were told they could forfeit the deposit if they wanted to back out on the sale. They were not in a position to lose \$10,000 so they decided to proceed with the purchase. This is corroborated by the bill of sale document found in exhibit D3; it shows [REDACTED] signature as purchaser.
- h. In cross examination, [REDACTED] admitted he proceeded with the complaint on behalf of himself as well as [REDACTED]
- i. Bender identified that the person who provided pricing to [REDACTED] on June 3, 2023, was sales manager Jazz Kanda. Bender made this identification based on the signature on the offer to purchase document found in exhibit D3. In cross examination, Bender admitted that as he is the General Manager-Principal of Country Hills, and he was not directly involved in the sale to [REDACTED] He testified he is directly involved in holding sales manager accountable for their conduct.
- j. Bender testified that all the terms of the sale were agreed to on June 6, 2023 when [REDACTED] attended the dealership. Financing was applied for at that time.

- k. Bender testified that the June 7, 2023 advertisement was in error. There was no advertised price. In response to questions from the Board, Bender admitted that he does not know how the June 7, 2023 advertisement was posted exactly but the theory is that when the vehicle was received in their system by their receptionist, the system automatically changed the price to the MSRP provided by the manufacturer. The receptionist did not remove the price off of the advertisement.
- l. Bender testified that, during previous AMVIC audits, this mistake had been addressed. Bender stated that AMVIC advised Country Hills that if a pricing error occurred, they were to explain to the consumer that they would not be selling the vehicle that day to anyone. AMIC advised that Country Hills should then correct the error, and then they could sell the vehicle. Bender put to AMVIC investigator Nina M. [REDACTED] ("M. [REDACTED]") that he had been told this by her; she denied that she had ever provided such advice. Bender provided no other corroborative evidence that AMVIC advised him to use this procedure.
- m. Bender provided exhibit A1 which was a training document, signed by a sales manager. Bender testified it showed the training that sales managers go through regarding advertised pricing. Exhibit A1 stated (among other things) that all vehicles must be sold at or below advertised price and that strict compliance is a requirement of employment. Bender testified that sales managers know if they do not follow this direction they will be terminated. Bender admitted in cross examination this document is signed at the time of hiring of a sales manager, and that only sales managers are required to sign this document because only they can approve the sale of a vehicle.
- n. Bender testified that, in this case, Country Hills employees followed the letter of the law.
- o. Bender admitted in cross examination that the June 7, 2023 advertisement price does not include any market price mark up, no luxury tax, no etching fee, and did not include the price of locking wheel nuts. He stated this was because the advertisement was not an advertisement; it was an error.

- p. In response to questions from the Board, Bender admitted that Country Hills had done further training with receptionists to ensure this will not happen again in the future. The automatic changing of advertised prices by the manufacturer when stock is received is a requirement of the manufacturer and Country Hills cannot change this. The prices are still automatically changed by the manufacturer upon receiving of stock.
 - q. Bender testified that in the AMVIC investigation as of April 30, 2024, there were no advertised pricing violations found at that time.
 - r. In response to questions from the Board, Bender stated that he does not believe that [REDACTED] ever asked for his deposit back. No one involved in the sale other than [REDACTED] was ever interviewed during the AMVIC investigation. Bender believed that Country Hills followed their correct procedure.
 - s. Exhibit D3 contained an investigative report from M [REDACTED] who also testified at the hearing. The report stated, "On May 15, 2024 attended Country Hills Chrysler and met with GSM Glenn Brown... He stated he is familiar with the complaint but not the transaction. He is unaware of any advertising of that vehicle. He explained that Jazz Kanda sales manager and Hitesh Bhagwani finance manager are no longer at the dealership and he was not able to speak with them for a sale almost a year ago."
- Based on the evidence, Country Hills breached s. 11(2)(l) of the ABR***
- t. The Board finds that the evidence of [REDACTED] and the documents he provided establish that there was an advertisement posted on June 7, 2023, for the same vehicle as the [REDACTED] had placed deposits for on June 3, 2023 and June 6, 2023.
 - u. Based on the testimony of Bender, the Board finds on a balance of probabilities that the Country Hills receptionist received the vehicle into inventory, and this caused the advertisement to be posted by an automated system.
 - v. Section 166 of the CPA states that any act or omission by an employee of a supplier is deemed to be an act or omission of the supplier itself if the employee is in the course of their employment. As the receptionist was an employee of Country Hills

and was acting in the course of her employment, the posting of the advertisement is therefore deemed to be an act of Country Hills itself.

- w. The Board finds that the June 7, 2023 advertisement showed a price of \$82,670. We find, as admitted by Bender, the advertised price did not include the total cost of the vehicle which was sold on June 10, 2023 for \$104,995. In particular the advertised price did not include all fees and charges, did not include the cost of accessories or optional equipment, and did not include administration fees.
- x. As such, the Board finds that Country Hills breached s. 11(2)(l) of the *ABR* by causing this advertisement to be posted. The advertised price on June 7, 2023 did not include the total cost of the vehicle as is required by s. 11(2)(l).

The evidence does not establish a defence to the breach

- y. The Board notes that a defence of due diligence is available to Country Hills. The burden of establishing this defence on a balance of probabilities rests on Country Hills. Country Hills did not advance a focussed defence during submissions. However, the Board reviewed the conduct of Country Hills using a reasonable person standard, and considered whether they took all reasonable steps (*R v Mooney*, 2023 ABCA 144 ("*Mooney*") at paras. 26 and 27).
- z. Country Hills provided testimony that the advertisement was posted in error. In *Mooney*, the Alberta Court of appeal stated that regarding due diligence, "A defence of 'human error' or honest but not necessarily reasonable mistake will not suffice" (*Mooney* at para. 27). Therefore, the Board finds that any error committed by Country Hills or their employees does not provide a defence to this breach.
- aa. In *R. v. Sault Ste. Marie*, 1978 CanLII 11 (SCC), [1978] 2 SCR 1299 ("*SSM*"), the Supreme Court addressed the law concerning a due diligence defence where an employer is charged with a breach committed by the act of an employee. They wrote, "the question will be ... whether the accused exercised all reasonable care by establishing a proper system to prevent commission of the offence and by taking reasonable steps to ensure the effective operation of the system" (*SSM* at p. 1331). In our case, this means that due diligence will be established if Country Hills

established a proper system to prevent this breach from occurring and took all reasonable steps to ensure that system was effectively operating.

bb. The Board notes that Country Hills provided very little evidence regarding any system they created to prevent this breach from taking place. The Board finds that the automated advertising system which triggered when the receptionist received the vehicle into inventory was known to Country Hills prior to the breach. The potential errors it posed were also known to them sufficiently that they received direction from AMVIC on what to do if any future breach occurred. There is some evidence that Country Hills trained their receptionist, however we do not find this evidence establishes they had a system to prevent the breach and took all reasonable steps to prevent it from occurring.

cc. The Board notes that exhibit A1 shows there was some system at Country Hills regarding compliance with s. 11(2)(l) advertised pricing. However, we note that exhibit A1 is a training document only presented to and signed by sales managers. This evidence is not relevant to a breach committed by the Country Hills receptionist.

dd. We therefore find that the evidence before us does not establish any defence to this breach.

Board Response to selected submissions

ee. Bender stated he believed that his staff followed the advice of AMVIC when they encountered the advertisement error. He believed they informed the consumer they could not sell the vehicle on that day, they fixed the advertising mistake, and then they sold the vehicle on another day. Bender did not believe the testimony of [REDACTED]. He stated his staff would have done as they were trained, but we do not know for sure because of the deficient investigation.

ff. The Board has several comments in response. First, what Country Hills or its employees did after the breach is not relevant to the commission of the breach itself or any defence of that breach. As noted by the Ontario Court of Justice, this is akin to "closing the barn door after the horse has fled" (*R. v. 1567990 Ontario Inc.*, 2009

ONCJ 605 at para. 23). Their response to a breach is not preventative in nature and therefore is not relevant to due diligence.

- gg. Second, we note that Bender's belief of what happened when he was not involved in the transaction directly is not persuasive evidence. We have based our findings on the evidence of [REDACTED] which we accept, as he was directly involved in the transaction and his testimony is substantially corroborated by the exhibits before us. We find that County Hills employees did not follow the procedure that Bender suggested, they did not offer to refund [REDACTED] deposits, and they did continue with the sale without regard for the June 7, 2023 advertisement breach.
- hh. Third, nine AMVIC bulletins found are before us in exhibit D4. These include bulletins regarding advertising toolkits, s. 11(2)(l) all-in pricing, and on-line advertising compliance. We note that none of these bulletins describe any procedure to follow akin to that described by Bender if a breach occurs. In fact, they describe no post-breach procedures at all; they inform the industry that they must follow the regulations at all times.
- ii. Bender submitted that we cannot know what happened because the investigation was essentially incomplete. He argued that the sales manager and finance manager that were involved in this sale were never interviewed. The Board does not find this lack of evidence significant. [REDACTED] testified to what he saw and heard during the transaction. We find his testimony, as well as the remaining evidence including the admissions of Bender, are sufficient to make our findings. We note that the investigative report at exhibit D3 identified the sales and finance manager involved with their full names. These individuals and their names were known to both parties. We note that neither party made any efforts to include them as witnesses in this hearing. We draw no inferences based on their non-inclusion.
- jj. Bender submitted that [REDACTED] was an experienced consumer in automotive sales and could have contacted AMVIC before he made the purchase but chose not to. Bender also submitted that [REDACTED] was not even the purchaser as his [REDACTED] signature appears on the bill of sale. The Board find that neither of these

submissions are relevant to any essential element of this breach or a defence of this breach.

Issue (2) Does the evidence establish a breach of s. 6(4)(a) of the ABR?

Relevant Legislation

20. Section 6(1.1) of the CPA states that it is an offence for a supplier to engage in an unfair business practise. Section 6(4)(a) of the CPA states that it is an unfair business practise for a supplier to do or say anything that might reasonably deceive or mislead a consumer.
21. Section 11(2)(d) and (n) of the ABR state that a business operator must ensure that every advertisement for an automotive business uses descriptions and makes promises only in accordance with actual conditions, situations and circumstances, and does not use false, misleading or deceptive statements.

Key Submissions

22. The Director provided the following key submissions:
- a. M [REDACTED] discovered a misleading disclaimer on Country Hills' website during the course of investigating the [REDACTED] complaint. A copy of the disclaimer was recorded by M [REDACTED] and is found in exhibit D3.
 - b. If a consumer read this disclaimer, they might be reasonable mislead about their rights regarding the accuracy of automotive advertisements and the advertised price. Therefore, Country Hills has breached s. 6(4)(a) of the CPA.
 - c. Country Hills did not argue any defence for this breach.
 - d. In response to questions from the Board, the Director emphasized that since the disclaimer is the only basis upon which a s. 6(4)(a) breach was found in the appealed AP, this is the only basis upon which they are alleging a breach of s. 6(4)(a) during the hearing.
23. Country Hills provided the following key submissions:
- a. This disclaimer has nothing to do with the [REDACTED] transaction or complaint.

- b. The disclaimer was put on the website by the manufacturer. Country Hills has subsequently stopped and blocked this disclaimer from the website; sometimes Country Hills has to adjust what the manufacturer posts.

Board's Decision

24. The Board finds that, on a balance of probabilities, Country Hills has breached s. 6(4)(a) of the CPA. We find that the evidence does not establish any valid defence to this breach. We base this finding on the totality of the evidence including the following evidence and reasoning:

- a. AMVIC investigator M [REDACTED] testified for the Director. In the course of investigating the [REDACTED] complaint, she accessed the Country Hills website to review advertisements.
- b. On the website, she found a disclaimer. M [REDACTED] recorded the website and disclaimer, which is found in exhibit D3. This showed a date of March 22, 2024.
- c. The disclaimer reads: "Although the intention is to capture current incentives and prices as of the date of publication, pricing is subject to change without notice, and may not be accurate or completely current. While every effort is made to ensure the accuracy of this data, we are not responsible for any errors or omissions contained on these pages...We reserve the right to make changes at any time, without notice or obligation, in the information contained on this site including and without limitation to prices, incentive programs, specifications, equipment, colours, materials, and to change or discontinue models. Images, pricing and options shown are examples, only, and may not reflect exact vehicle colour, trim, options, pricing or other specifications. Images shown may not necessarily represent identical vehicles in transit to the dealership. See your dealership sales representative for actual price, payments and complete details."
- d. Bender testified that Country Hills had removed this disclaimer once it was brought to their attention. The disclaimer was put on their website by the manufacturer.

- e. The Board finds, based on the evidence of M [REDACTED] and the admission of Bender, that this disclaimer was displayed on the Country Hills website as of March 22, 2024.
- f. As Country Hills was able to remove the disclaimer from their website, we find that Country Hills had control over the content of their website.
- g. We note that the wording of s. 11(2)(d) of the *ABR* effectively states that every Country Hills advertisement must use descriptions for vehicles “only in accordance with actual conditions, situations and circumstances.” Section 11(2)(n) of the *ABR* effectively states it is Country Hills responsibility to ensure that there is nothing false or misleading in any of their advertisements.
- h. The Board finds that the disclaimer found on the Country Hills website makes statements to consumer which are contrary to those found in s. 11(2)(m) and (n) of the *ABR*. In particular, the disclaimer incorrectly states that pricing and vehicle descriptions do not have to be accurate. The disclaimer also incorrectly states that Country Hills is not responsible for any errors or omissions.
- i. The Board finds that, by directly misinforming consumers and making inaccurate statements, the disclaimer would reasonably mislead a consumer.
- j. The Board therefore finds that Country Hills breached s. 6(4)(a) of the *CPA*. We note that no defence to this breach was argued by Country Hills and no evidence was provided regarding any attempt to avoid this breach.

Board Response to selected submissions

- k. Country Hills submitted that the disclaimer has nothing to do with the [REDACTED] transaction and complaint.
- l. The Board agrees. However, Country Hills is responsible for compliance with the regulations at all time. It is reasonable and typical that the Director will allege all breaches discovered in the course of their investigations.
- m. Country Hills submitted that the disclaimer was posted on the website by the manufacture and that they sometimes have to adjust what the manufacturer posts.
- n. The Board recognizes that Country Hills has a certain relationship with the manufacturer. How they arrange this relationship is up to them; it is a business

decision. Country Hills' business decisions do not exempt them from ensuring compliance with CPA and does not absolve them of their duty to not misinform consumers. The Board finds the misleading disclaimer is not simply the manufacturer's fault. Rather, the misleading disclaimer was found on the Country Hills website which they have control over, and they are responsible for compliance on their website.

Issue (3) Does the evidence establish a breach of s. 31.2 of the ABR?

Relevant Legislation

25. Section 31.2(1)(l) of the ABR states that any bill of sale for an automotive sale must contain 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.
26. Section 4 of the CPA states that for any contract in any consumer transaction, if a provision of the document is ambiguous, the provision must be interpreted against the supplier.

Key Submissions

27. The Director provided the following key submissions:

- a. The [REDACTED] bill of sale only contains the line item "protections." It is clear from the deal summary document that protections included installed locking wheel nuts, nitrogen in the tires, platinum security etching, and financial loss insurance. These were not listed on the bill of sale therefore Country Hills breached s. 31.2 of the ABR.
- b. Country Hills did not argue any defence for this breach.

28. Country Hills provided the following key submissions:

- a. Each additional accessory and product added to the vehicle purchase was agreed to separately by the [REDACTED]
- b. They signed for each product separately. All extra equipment and options were known to the purchaser therefore there is no breach.

Board's Decision

29. In summary, the Board finds that, on a balance of probabilities, Country Hills has breached s.31.2 of the *ABR*. We find that the evidence does not establish any valid defence to this breach. We base these findings on the totality of the evidence including the following evidence and reasoning:

- a. The bill of sale document provided in exhibit D3 shows a charge for "protections" in a single line item for \$3438. [REDACTED] verified this bill of sale was signed by [REDACTED] when purchasing the vehicle on June 10, 2023.
- b. The deal summary document provided in exhibit D3 shows "locks and nitro" for \$199, "platinum security" for \$740, and "financial loss" for \$2499. Bender verified that the deal summary document is internal to Country Hills and is not provided to consumers. He verified that these items referred to locking wheel nuts, nitrogen in the tires, security etching and a financial loss insurance product were sold along with the vehicle to the [REDACTED]
- c. The Board notes that these three items add up to \$3438.
- d. [REDACTED] testified that he witnessed locking wheel nuts and security etching stickers being installed on the vehicle. He testified these were installed as he and his [REDACTED] applied for financing at Country Hills dealership on June 6, 2023. The installation of the locking wheel nuts and nitrogen on June 6, 2023 is corroborated by service order documents found in exhibit D3.
- e. A financial loss membership enrollment document provided in exhibit D3 shows [REDACTED] signed for the financial loss product on June 10, 2023. A "platinum autoplus" agreement document found in exhibit D3 shows [REDACTED] signed for the platinum security product on June 10, 2023.
- f. The Board finds that extra equipment and options were sold in connection with the vehicle or installed on the vehicle at the time of sale on June 10, 2023. We find that the line item of "protections" on the bill of sale refer to these options and extras. We find that the options and extras included locking wheel nuts, nitrogen, a security

etching product, and a financial loss product. These items were not itemized on the bill of sale.

- g. The Board finds that Country Hills therefore breached s. 31.2 of the *ABR* by not including the required information regarding options and extras sold. We note that no defence to this breach was argued by Country Hills and no evidence was provided regarding any attempt to avoid this breach.
- h. Country Hills submitted that each of these products were disclosed to the [REDACTED] when they purchased the vehicle. We agree. However, the consumer's knowledge of these products does not affect the fact that Country Hills bill of sale is not compliant with the regulations.

Issue (4) Given the breaches established, should the Board confirm, vary or quash the administrative penalty of \$15000?

Key Submissions

30. The Director provided the following key submissions:

- a. The factors found in s. 2 of the *Administrative Penalties (Consumer Protection Act) Regulation*, Alta Reg 135/2013 ("APR") should be considered in imposing an AP.
- b. Considering these factors, a \$15,000 AP should be imposed upon Country Hills.
- c. \$15,000 is a lower end AP of the range. APs can be as high as \$100,000.
- d. With respect to seriousness of the breaches, the s. 11(2)(l) breach is less serious. The s. 6(4)(a) breach is very serious because the disclaimer was made public and it would mislead any consumer who read it.
- e. With respect to history of non-compliance, Country Hills has two prior APs that involve breaches of s. 6(4)(a), s. 11(2)(l) and s. 31.2. The APs of \$3500 and \$3750 were not enough to deter Country Hills from repeating this misconduct. Neither of these APs were appealed by Country Hills.
- f. With respect to degree of negligence, Country Hills has been provided with AMVIC bulletins in 2022 and 2023 that advise of advertising pricing requirements, bill of sale

requirements and other education. Country Hills was subject to inspections in 2017 and 2018 which found non-compliance in advertising requirements. Given these bulletins and their previous non-compliance, the Director argues that Country Hills demonstrates a high degree of negligence in their breaches.

- g. With respect to impact on any person adversely impacted by the breaches and economic benefit, the [REDACTED] purchased a vehicle for more than \$20,000 over the advertised price after they were led to believe their \$10,000 deposit would be forfeit. Country Hills economically benefited from the higher than advertised sale price. While there is no demonstrated impact of the s. 6(4)(a) breach, the Director notes it is still significant that the Country Hills misleading conduct still served to attempt to defeat one of the objectives of consumer protection i.e. the right of consumers to be properly informed about products and transactions.
- h. The Director provided two decisions for the Board to consider. In *2189596 Alberta Ltd. operating as Calgary Hyundai (Re)*, dated December 17, 2023, the Consumer Services Appeal Board accepted a \$15,000 joint submission that was similar factually to our case, but included the mitigating factor of that Calgary Hyundai admitted their fault. *Windmill Auto Sales & Detailing Ltd. v. Registrar of Motor Dealers*, 2014 BCSC 903 states at paragraph 59, "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."

31. Country Hills provided the following key submissions:

- a. No breaches should be found. However, if there are breaches found, there was no degree of wilfulness in any of the breaches.
- b. Country Hills took steps immediately to fix any mistakes.
- c. Bender does not think they could have said anything to dissuade [REDACTED] from purchasing the vehicle; he would have challenged anyone at the dealership if we refused to sell him the vehicle on June 10.

- d. For the inspections in 2017 and 2018, Bender was not a member of the dealership at that time. He became dealer-principle in 2022.
- e. There was no adverse impact to any consumer by the breaches.
- f. Regarding the quantity of any AP imposed, given the mitigating factors described above, these are minor contraventions. There should be an AP imposed of \$0. If there needs to be a financial penalty, something lower in the range of \$3500 or \$3750 is appropriate.

Board's Decision

32. The factors we must consider in regard to sanction are found in s. 2(2) of the *APR*. These factors are:

- a. the seriousness of the contravention;
- b. the degree of wilfulness or negligence in the contravention;
- c. the impact on any person adversely affected by the contravention;
- d. whether or not the person ... has a history of non-compliance;
- e. whether or not there were any mitigating factors relating to the contravention;
- f. whether or not the person ... has derived any economic benefit from the contravention; and
- g. any other factors that, in the opinion of the [Board], are relevant.

The Seriousness of the contraventions

33. The Board finds the s. 11(2)(l) breach to be somewhat serious. The advertisement was posted after the [REDACTED] had substantially completed the deal with Country Hills, and that militates the seriousness of the breach. However, the breach occurred due to an error by not manually fixing an advertisement that was automatically posted by the system that Country Hills uses in the normal course of their business; the automated nature of the breach increases its seriousness.
34. We find the s. 6(4)(a) breach to be very serious. The disclaimer found on the Country Hills website would have mislead any consumer who encountered it. We find it significant that this disclaimer was posted to the public.

35. We find the s. 31.2 breach to be very serious. The non-compliant bill of sale is a form document that is used in every vehicle sale by Country Hills.

36. This factor is aggravating towards sanction.

The Degree of negligence in the contraventions

37. The Board finds that the degree of negligence in these breaches to be significant.

38. Country Hills has known and been repeatedly advised of the regulatory requirements that they breached. They had been subject to inspections in 2017 and 2018 by AMVIC which resulted in education being provided regarding these regulatory requirements. Country Hills had also been provided with AMVIC bulletins that are relevant to these breaches; these are found in exhibit D4. In particular, they had been provided with four bulletins from 2022 (July 18, August 29, September 28, October 4) and one from February 16, 2023 regarding compliance with s. 11(2)(l) of the ABR. They had been provided with a December 15, 2022 and a December 12, 2023 bulletin regarding s. 6 of the CPA and online advertising compliance. They have been provided with a March 2, 2023 bulletin regarding compliance with s. 31.2 of the ABR.

39. Regarding s. 11(2)(l), Country Hills was so aware of these breaches due to their automated system, they had sought advice from AMVIC regarding what to do when a breach occurred. We find that this breach was a predictable outcome of the system they had chosen to employ in their business. The Board finds this shows a high degree of negligence.

40. Regarding s. 6(4)(a), it is also the case that Country Hills employed a business system which allowed their website to be modified by the manufacturer without their knowledge, and this occurred without a system to ensure regulatory compliance. We find that this shows a high degree of negligence.

41. Regarding s. 31.2, that Country Hills used a standard form bill of sale that is non-compliant, and this shows a high degree of negligence.

42. This factor is highly aggravating towards sanction.

The Impact on any person adversely affected and economic benefit derived

43. The Board finds that there is little evidence regarding the actual adverse effects of these breaches or the economic benefit derived from the breaches.
44. We note that the potential impact regarding the s. 6(4)(a) breach is enormous as the disclaimer was made available to the public. We also note that the s. 31.2 breach also has significant potential impact as it affects a normal business practise for Country Hills in their form bill of sale. However, we note that there was no direct evidence on these points.
45. This factor is neither aggravating nor mitigating towards sanction.

Whether or not the person ... has a history of non-compliance

46. Country Hills has a history of non-compliance.
47. On January 18, 2022, the Director imposed an AP of \$3500 for a breach of ss. 6(4)(a), 6(2)(c), and 6(2)(d) of the CPA, and s. 31.2 of the ABR.
48. On May 2, 2023, the Director imposed an AP of \$3750 for three contraventions of s. 11(2)(l) of the ABR.
49. Neither of these APs were appealed.
50. The Board finds it incredibly significant that Country Hills has a recent history of non-compliance of the exact same breaches as it has now again been found in contravention of. We also note that these APs do not appear to have had a specific deterrent effect on Country Hills.
51. This factor is extremely aggravating towards sanction.

Any relevant factors; mitigating and aggravating factors relating to the contravention

52. We recognize that Country Hills removed the misleading disclaimer from their website regarding the s. 6(4)(a) breach. We also recognize that Country Hills stated they have better trained their receptionists regarding the s. 11(2)(l) breach. This is somewhat mitigating.
53. However, we note that regarding all of these breaches, Country Hills has not taken responsibility to address the root of the problem. They have taken no steps to review of their bill of sale to ensure it is compliant with regulation. They have not addressed the use of an automated advertisement system to ensure compliance. They have not addressed the manufacturer's access to their website such that Country Hills may ensure that the website

contains only compliant content. The Board finds that Country Hills has not taken responsibility for their business practices. This is evident in their history of non-compliance. This was also evident at the hearing where Country Hills took minimal responsibility for their own actions regarding their non-compliance, and took minimal responsibility for their role as a member of a regulated industry.

54. This factor is extremely aggravating towards sanction.

Precedential decisions

55. The Director provided the precedent of *2189596 Alberta Ltd. operating as Calgary Hyundai (Re)*, dated December 17, 2023. In this decision, the Consumer Services Appeal Board accepted a \$15,000 joint submission for a breach of s. 6(4)(a) and s. 11(2)(l). The Board notes that Calgary Hyundai had no history of non-compliance, and they took significant responsibility for their misconduct including changing their systems going forward.

56. The Board finds that our case is clearly more aggravated than this precedent.

Conclusion on Sanction

57. In consideration of the factors reviewed above, in consideration of the aggravating seriousness of these breaches, the high degree of negligence, the very similar and recent history of non-compliance, the lack of responsibility demonstrated by Country Hills, the mitigating effect of their efforts to respond to the breaches, and the precedent reviewed, the Board finds that a sanction of \$20,000 is just and appropriate.

CONCLUSION AND ORDER

58. In accordance with the reasons above, the Appeal Board varies the Director's February 10, 2025 decision. We impose an administrative penalty of \$20,000.

59. No decision is made as to costs.

ISSUED AND DATED at the City of Calgary in the Province of Alberta this 27 day of August, 2025

"original signed by"

Christopher Davison, Chair

"original signed by"

Kent Pallister, Board Member

"original signed by"

Jamie Tiessen, Board Member