

DUSTIN JONATHAN DANIELS
OF
1571019 ALBERTA LTD.
OPERATING AS
BOSS PERFORMANCE & AUDIO
AND
ALBERTA MOTOR VEHICLE INDUSTRY COUNCIL

This appeal board decision was issued under s. 179 of the *Fair Trading Act* in response to an appeal by the named parties. As allowed by s. 16 of the Appeal Board Regulation, this appeal board decision is part of the public record.

For more information on the *Fair Trading Act*, business licensing in Alberta or to search for a licensed business, please click here:

[Search for a Licensed Business, Charity or Fundraiser](#)

To find the Director's Order being appealed, please click here:

[Director's Orders](#)

Re: In the Matter of an Appeal by Dustin Jonathan Daniels of 1571019 Alberta Ltd. o/a Boss Performance & Audio of the July 19, 2013 Decision of the Alberta Motor Vehicle Industry Council to Refuse an Automotive Business License under the Fair Trading Act

December 15, 2013

Appeal Board: Paul Alpern (Chair), Nick Tywoniuk, Hilda Lupul

Representing the Applicant, Dustin Jonathan Daniels of 1571019 Alberta Ltd. o/a Boss Performance & Audio ("Daniels"): Alexander S. Millman, legal counsel

Representing the Respondent, Alberta Motor Vehicle Industry Council ("AMVIC") and the Director of Fair Trading, as Delegated: Vivian Stevenson, legal counsel (Duncan Craig LLP)

*Appeal Heard: November 5, 2013, 2013 commencing at 9 am.
Location: Service Alberta, Commerce Place, 10155 - 102 Street,
Edmonton, Alberta*

An Appeal Board constituted pursuant to section 179 of the *Fair Trading Act*, R.S.A. 2000, c. F-2, and the *Appeal Board Regulation* thereunder (Alberta Regulation 195/199) met to hear an appeal by Daniels of the July 19, 2013 decision of AMVIC not to issue an automotive business license for wholesale vehicle sales to Daniels.

THE ISSUES

1. Before refusing to issue or renew a licence to Daniels, did AMVIC follow the process required by S. 128 of the Fair Trading Act?
2. Did AMVIC have reasonable grounds to refuse to issue an automotive business license for wholesale vehicle sales to Daniels?
3. In the circumstances, is it appropriate for this Appeal Board to vary or quash the decision that is being appealed?

RELEVANT LEGISLATION

*Fair Trading Act - 104(1); 127; 128; 179; 180
Automotive Business Regulation - 3(7); 4*

BACKGROUND AND EVIDENCE

Daniels evidence included:

1. Daniels and his brother, Casey Cardinal, operate 1571019 Alberta Ltd. o/a Boss Performance & Audio ("Boss Performance").
2. Daniels grew up in the Cold Lake area. He completed grade 10. He has no other schooling/training.
3. He set up Boss Performance to "stay on a straight path, to keep busy.... to be successful".

4. He buys and sells cars at auction and does minor repairs.
5. He doesn't have a mechanic's license, so work on cars is limited and includes: cleaning, oil changes, tires and stereos.
6. Daniels previously held an unconditional AMVIC license through 2011 (under a different company name – that company ceased operations in October 2010).
7. Daniels didn't specifically recall if Boss Performance previously held a sales license in its own name.
8. When Daniels previous company was licensed, it was a wholesale license. Much of Daniels' business was auction to auction (purchasing cars at auction, cleaning them, etc. and reselling them at auction).
9. Daniels also had a vehicle salesperson license through AMVIC (now on hold).
10. At present, Daniels has no AMVIC licenses (salesperson, repair or sales).
11. Daniels was trying to figure out a way to retail/wholesale vehicles from Boss Performance's current location and/or to sell vehicles from a friend's licensed site.
12. It was made clear to Daniels by AMVIC that he could not sell vehicles without a license.
13. Boss Performance relocated. The new location was not zoned properly for the AMVIC license in place, so Daniels had to apply for a new license.
14. Daniels attended at AMVIC's offices on or about April 8, 2013 and completed an Application for a Provincial Automotive Business License (the "Application"), specifically for a wholesale sales license.
15. Daniels admits to having missed a few things on the Application, including incorrectly answering questions about:
 - a. Whether he had been convicted of an offence under any law;
 - b. Whether he had been known by or operated a business by any other name.
16. Daniels states he was in a "terrible rush" when he completed the form and "didn't get to read it fully".
17. On cross examination, Daniels admitted to having completed the form twice before.
18. Daniels acknowledged that by signing the Application, he authorized AMVIC to conduct a background check and a criminal record check.
19. Daniels acknowledged that he received a call from AMVIC on April 23, 2013 about a warrant for his arrest and that he was advised that his application for an AMVIC license would not proceed until the warrant was cleared.
20. Daniels states that he wasn't aware of the warrant (for breach of recognizance), but when he found out about it, he cleared it as soon as he could.
21. After Daniels submitted his Application, he received a letter from AMVIC dated June 25, 2013 (the "Proposal Letter") proposing to refuse Daniels' application for an automotive business license and an automotive salesperson registration on the following grounds: "The information AMVIC received when we conducted our routine background check causes us concern."
22. Also by that letter, Daniels was invited by AMVIC to a meeting on July 18, 2013 at AMVIC's offices to make representations about the proposed disposition of the license application and to discuss the application.
23. Daniels attended the July 18, 2013 meeting (the "Hearing").
24. At the Hearing, Daniels met with John Bachinski, AMVIC Executive Director and Director of Fair Trading, as Delegated ("Bachinski" or "the Director") and LuAnne Sirdiak, AMVIC Senior Manager – Investigations ("Sirdiak").
25. Daniels says that during the Hearing, Bachinski asked Daniels if Daniels had a criminal record. Daniels responded "Yes - for breach of recognizance and impaired". Bachinski asked "Anything else?". Daniels responded: "No". Bachinski said: "What about...?" Daniels responded that he had a few other charges, but no convictions. It was suggested to

Daniels that Bachinski had asked Daniels if he had been selling vehicles even though his license had lapsed. Daniels responded that he didn't recall that.

26. Daniels stated that he didn't have a chance to fully explain his circumstances and why he should have a license.
27. Daniels stated that Bachinski was trying to have Daniels explain what, if any, criminal charges were pending against him, but Daniels didn't think he had to address anything other than criminal convictions.
28. With respect to his convictions, Daniels suggests they were wrongful and that he didn't have money to appeal to at the time.
29. Daniels stated that the Hearing with Bachinski and Sirdiak took about 15 minutes and was beginning to get heated. At the end of the Hearing, Daniels says Bachinski said "You're lying... you're not getting your license today....your application is denied and something in writing would follow."
30. Daniels stated that he felt the discussion was going to turn into an argument, so he didn't respond.
31. Daniels later received a letter from AMVIC/Bachinski dated July 19, 2013. The letter included the following:

"An administrative hearing was held on July 18, 2013 at the Edmonton AMVIC office with Mr. Daniels, LuAnne Sirdiak, AMVIC Sr. Manager of Investigations and the writer in attendance. The hearing proceeded at 9:00 a.m.

1. *Mr. Daniels was not forthcoming regarding his past dealings with the criminal system and court convictions. He did eventually admit to having a criminal record.*
2. *Mr. Daniels also indicated in the AMVIC application form that he had not been convicted of a criminal offence and did not complete the "Criminal Record Conviction Form". The AMVIC Business application form clearly states: "A person who makes a false statement on any application or document submitted to the Director under the Fair Trading Act commits an offence".*
3. *Mr. Daniels did not accept responsibility for any of the convictions but referred to each one as being wrongfully convicted and that his lawyer told him that the court had erred in its' decisions.*
4. *The convictions that Mr. Daniels admitted to are very recent and therefore more time should pass to allow Mr. Daniels the opportunity to show that he is willing and capable of operating an automotive business license in the Province of Alberta.*

Director's Decision

It is my decision, as Director of Fair Trading as delegated, to NOT issue an automotive business license for wholesale vehicle sales to 1571019 Alberta Ltd. for the following reasons:

1. *As the Fair Trading Act is considered consumer legislation with disclosure being paramount, it is in the public interest under section 127(C) of the Fair Trading Act not to issue Mr. Daniels a wholesale license at this time."*
32. It's that decision Daniels is appealing.

LuAnne Sirdiak's, AMVIC Senior Manager – Investigations ("Sirdiak") Evidence Included:

1. She supervises a team of investigators at AMVIC.
2. She's been in her current role since April 2013.
3. She sits in on administrative hearings. She sat in on Mr. Daniels' hearing.
4. She reviewed Mr. Daniels' file.
5. Once a licensing application is received by AMVIC, a criminal record check of the applicant is undertaken by a member of AMVIC's licensing group. If they find that an applicant has a record, the file goes to the licensing manager then to Sirdiak as the Manager of Investigations.
6. A "Licence Application Report" is prepared which includes a recommendation.
7. In Daniels' case, such a Licence Application Report was prepared on April 19, 2013 (the "Report").
8. The Report included the following:
 - a. Issue: Background Check
 - b. Key Messages: Applicant has an arrest warrant; Applicant may have gang affiliations
 - c. Recommendation: Conduct hearing to discuss warrant to determine if the applicant is eligible and suitable to have an AMVIC business license/registration.
 - d. Director's Decision: "April 23, 2013. Called and spoke with Dustin. File on hold until warrant is cleared."
9. A Justice Online Information Network search was undertaken to confirm that Daniels' warrant was cleared.
10. Sirdiak confirmed that AMVIC sent the Proposal Letter to Daniels on June 25, 2013.
11. Sirdiak, Bachinski and Daniels were at the Hearing on July 18, 2013.
12. At the Hearing, Sirdiak confirmed Daniels' mailing address and other contact information and Bachinski confirmed the hearing process – it's informal, Daniels will have the opportunity to ask questions, make statements, etc.
13. Sirdiak stated that at the Hearing she asked Daniels questions about the criminal record information AMVIC had obtained about him from the Canadian Police Information Center ("CPIC"). Sirdiak told Daniels that she expected his answers to AMVIC's questions about his criminal record would be truthful and would match the information they had obtained through CPIC.
14. Sirdiak stated that initially Daniels did not acknowledge that he had convictions for impaired driving and breach of recognizance but then admitted to those convictions when pressed but would not give any other information.
15. Sirdiak stated that Daniels said he had been charged, but didn't think he had a record.
16. Sirdiak stated that the Hearing lasted for at least ½ hour and that nothing prevented Daniels from giving any further information or making any additional representations.
17. Sirdiak stated that Bachinski told Daniels at the Hearing that his license application had been refused and talked about the appeal process.
18. AMVIC's July 19, 2013 letter followed.
19. On cross-examination, Sirdiak confirmed:
 - a. She has familiarity with CPIC.
 - b. She has authority to use CPIC.
 - c. CPIC discloses more than criminal record information; it includes lost/stolen passport information, vehicle information and other information.
 - d. There is a difference between querying a criminal record and querying a person.
 - e. CPIC may include information about acquittals.
 - f. There needs to be an exact match on a person before CPIC information is used.

- g. She has no information about the reference in the report to "Applicant may have gang affiliations". That issue was not raised with Daniels and did not form part of the decision to refuse Daniels' license.

DANIELS' ARGUMENTS

In summarizing his position on behalf of Daniels, Mr. Millman stated:

1. The Proposal Letter and notice of hearing sent to Daniels contained no information about AMVIC's suggestion that Daniels had gang affiliations.
2. That suggestion was highly prejudicial and Daniels had no opportunity to respond to it.
3. That may be a contravention of section 128 of the Fair Trading Act.
4. The full reasons for the license refusal may not have been provided to Daniels.
5. Daniels might have incorrectly answered questions on the Application, but when asked about his record, he acknowledged what was on it; when he was asked about an outstanding warrant, he cleared it.
6. With respect to the warrant, Millman advised that it was issued ex parte and Daniels dealt with it as soon as it came to Daniels' attention.
7. The criminal offences Daniels was convicted of are not in relation to the business.
8. The errors on Daniels' Application were corrected at the earliest opportunity.
9. The penalty of refusal to issue a license is too severe. There's no public interest/concern served by completely refusing to issue a license to Daniels.
10. Suggests a license be issued with conditions, perhaps including notifying the Director of any pending charges.
11. Daniels is trying to stay away from criminal behavior.
12. The breach of recognizance conviction involved Daniels not being inside his residence past a specified curfew.
13. Suggests that this matter be sent back to the Director for a full hearing with an opportunity to respond to the key messages in the Report or, alternatively, levy a fine against Daniels in the order of \$500 to deter any further non-compliance.

AMVIC'S ARGUMENTS

In summarizing AMVIC'S position, Ms. Stevenson stated:

1. Daniels' license application was refused because:
 - a. Daniels breached Section 127(b)(iii) of the Fair Trading Act by giving false information;
 - b. Daniels breached Section 127(b)(vii) of the Fair Trading Act by having been convicted of criminal offences;
 - c. It is in the public interest to do so (pursuant to Section 127(c) of the Fair Trading Act.
2. Daniels' suggestion that his errors on the Application were a result of his being in a hurry is not believable. The question with respect to a criminal record invites a straightforward "Yes" or "No" answer. Daniels answering "No" was an important omission of a material piece of information.
3. Daniels exhibited a lack of candor and an unwillingness to accept responsibility for his actions. That's what principally guided the Director in his decision to refuse the license Application.

4. There is no suggestion and no evidence that the Director took into account the information in the Report about Daniels' possible gang affiliation when making his decision.
5. The Director didn't raise the alleged gang affiliation issue in the Proposal or at the Hearing because it was not in issue and would not factor into the Director's decision.
6. The Fair Trading Act is consumer protection legislation.
7. The Court has confirmed that AMVIC can access and rely upon CPIC information.
8. Daniels' omissions on the Application and his lack of candor at the Hearing suggests that there's a governability challenge with Daniels. The Director remains concerned that Daniels will not be compliant with AMVIC rules/regulations.

ANALYSIS AND CONCLUSIONS

1. Before refusing to issue or renew a licence to Daniels, did AMVIC follow the process required by S. 128 of the Fair Trading Act?

This appeal board finds that AMVIC did follow the process required by S. 128 of the Fair Trading Act. The Proposal constituted notice to Daniels of:

- (a) the proposed refusal by AMVIC to approve Daniels' Application; and
- (b) notice of the Hearing at which Daniels would have an opportunity to make representations to the Director.

This appeal board concludes that the issue of Daniels' possible gang affiliations did not form part of the Director's decision and, accordingly, Daniels did not have a right at the Hearing to make representations to the Director on that issue.

2. Did AMVIC have reasonable grounds to refuse to issue an automotive business license for wholesale vehicle sales to Daniels?

This appeal board finds that Daniels' credibility is in issue for the following reasons:

- (a) Daniels answered questions on the Application falsely, including:
 - (i) whether he had been convicted of an offence under any law; and
 - (ii) whether he been known or operated a business by any other name.
- (b) Daniels lack of candor at the July 18, 2013 Hearing about his criminal convictions and his unwillingness to accept responsibility for his past actions.

Based on all the evidence, this appeal board cannot conclude that Daniels' false answers on the Application were inadvertent or innocent. In short, we find Daniels lied on his Application and continued to lie at the July 18, 2013 Hearing and at the hearing that is the subject of this decision.

While the two prior convictions on Daniels' criminal record may or may not necessarily have led to the Director's decision to refuse Daniels' Application, the conclusion that Daniels was not being candid and truthful at the Hearing most certainly contributed to the Director's concerns about Daniels' honesty, integrity and governability. That, together with Daniels' prior convictions, contributed to the Director's decision that it was not in the public interest to issue a license to Daniels.

This appeal board shares the Director's concerns and concludes that for the protection of the public and as a general and specific deterrence, the Director had reasonable grounds to refuse to issue an automotive business license for wholesale vehicle sales to Daniels.

3. In the circumstances, is it appropriate for this Appeal Board to vary or quash the decision that is being appealed?

While the Director does have discretion to issue or renew an automotive business license depending on the specific facts and circumstances of an applicant, in the present case, given the record and conduct of Daniels, including his intentional or careless disregard for the truth during the Application and the appeal process, this appeal board finds no compelling reason to interfere with the Director's decision in this case except to provide for a timeframe within which Daniels may reapply to AMVIC for a wholesale vehicle sales license and to provide some guidance to the Director with respect to the conditions upon which the Director may choose to issue such a license to Daniels.

DECISION

For the above reasons, the July 19, 2013 decision of the Director not to issue an automotive business license for wholesale vehicle sales to Daniels is confirmed with the following variations:

1. Daniels may reapply to AMVIC for a wholesale vehicle sales and/or salesperson license no earlier than April 1, 2014;
2. Provided there are no new issues which would compel AMVIC, in the public interest, to deny such an application, AMVIC may grant such application subject to such terms as AMVIC may consider appropriate, including:
 - a. Daniels must advise AMVIC in writing of any further criminal convictions;
 - b. Daniels must be fully honest and forthright with AMVIC in all respects; and
 - c. If a license is granted, Daniels will conduct himself and his business with honesty, integrity and in full compliance with the law.

No order is made as to costs.

ISSUED and DATED at the City of Edmonton in the Province of Alberta this 15th day of December, 2013 by the Appeal Board constituted to hear the above referenced matter pursuant to section 179 of the Fair Trading Act and the Appeal Board Regulation thereunder.

Paul Alpern (Chair)
Hilda Lupul
Nick Tywoniuk