

Re: In the Matter of an Appeal by Alberta Credit Specialists Ltd. from the July 21, 2017 Decision of the Director of Fair Trading (as delegated to the Alberta Motor Vehicle Industry Council) to Not Grant an Automotive Business License to Alberta Credit Specialists Ltd.

December 10, 2017

Appeal Board: Paul Alpern (Chair), Caren Mueller, Nick Tywoniuk

Appearing for the Appellant, Alberta Credit Specialists Ltd.: Mohamed Haji Yusuf, owner/operator of Alberta Credit Specialists Ltd.

Representing the Respondent, the Director of Fair Trading as delegated to the Alberta Motor Vehicle Industry Council: Paula Hale, Lawyer - Shores Jardine LLP

Appeal Heard: 31 October 2017 at Service Alberta Offices located at Commerce Place, 10155 – 12 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 of the July 21, 2017 decision of the Director of Fair Trading (as delegated to the Alberta Motor Vehicle Industry Council) to not grant an automotive business license to Alberta Credit Specialists Ltd.

THE ISSUES

Should this Appeal Board vary, confirm or quash the July 21, 2017 decision of the Alberta Motor Vehicle Industry Council ("AMVIC") to not grant an Automotive Business License issued to Alberta Credit Specialists Ltd.?

RELEVANT LEGISLATION

Fair Trading Act

- 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.*
(4) *Without limiting subsections (2) and (3), the following are unfair practices if they are directed at one or more potential consumers:*
- (a) *a supplier's doing or saying anything that might reasonably deceive or mislead a consumer;*
- 126** (1) *A person who wishes to be licensed or to have a license renewed under this Act must submit to the Director*
- (a) *an application on a form established by the Director,*
 - (b) *any additional information that is requested by the Director, including a criminal record check or authorization to obtain a criminal record check,*
 - (c) *the fee established under the regulations, and*
 - (d) *if the regulations require a security or payment into an assurance fund approved by the Director to be submitted in respect of the class of license*

applied for, a security or proof of payment into the assurance fund that meets the requirements of the regulations.

(2) The application and other information submitted under subsection (1) must, on the request of the Director, be verified by affidavit or in another manner that is satisfactory to the Director;

(3) A person who makes a false statement of fact or misrepresents any fact or circumstance in any application or document submitted to the Director under this Act commits an offence.

127 *The Director may refuse to issue or renew a license, may cancel or suspend a license and may impose terms and conditions on a license for the following reasons:*

(a) the applicant or licensee does not or no longer meets the requirements of this Act and the regulations with respect to the class of license applied for or held;

(b) the applicant or licensee or any of its officers or employees

(i) fails to comply with an order of the Director under section 129 or 157, unless, in the case of an order under section 129 or 157, the order has been stayed;

(ii) fails to comply with a direction of the Director under section 151(3),

(iii) furnishes false information or misrepresents any fact or circumstance to an inspector or to the Director,

(iv) fails to comply with an undertaking under this Act,

(v) has, in the Director's opinion, contravened this Act or the regulations or a predecessor of this Act,

(v.1) fails to comply with any other legislation that may be applicable,

(vi) fails to pay a fine imposed under this Act or a predecessor of this Act or under a conviction or fails to comply with an order made in relation to a conviction, or

(vii) is convicted of an offence referred to in section 125 or is serving a sentence imposed under a conviction;

(viii) fails to pay, in accordance with the notice of administrative penalty and the regulations, an administrative penalty imposed under this Act;

(c) in the opinion of the Director, it is in the public interest to do so.

128(1) *Before refusing to issue or renew a license and before a license is suspended or cancelled or terms or conditions are imposed, the applicant or licensee must be given*

(a) written notice of the proposed refusal, suspension or cancellation or the proposed terms and conditions with reasons, and

(b) an opportunity to make representations to the Director.

179(1) *A person*

(a) who has been refused a license or renewal of a license,

(b) whose license is made subject to terms and conditions,

(c) whose license has been cancelled or suspended under section 127, or

(d) ...

may appeal the decision or order by serving the Minister with a notice of appeal within 30 days after being notified in writing of the decision or order.

(2) *The Minister must, within 30 days after being served with a notice of appeal under subsection (1) and payment of the fee for the appeal as established by the regulations, refer the appeal to an appeal board appointed in accordance with the regulations or to an appeal board designated under subsection (4).*

- (3) *The Minister may appoint an individual as the chair of the appeal board who serves as the chair whether or not an appeal is being considered by the appeal board.*
- (4) *The Minister may designate a board or commission established by or under an Act of the Legislature to be an appeal board for the appeals specified in the designation.*
- (5) *The Minister may set the time within which an appeal board is to hear an appeal and render a decision and may extend that time.*
- (6) *An appeal board that hears an appeal pursuant to this section may confirm, vary or quash the decision or order that is being appealed.*
- (7) *The Minister may set the rates of remuneration for and provide for the payment of reasonable living and travelling expenses to the members of an appeal board.*
- (8) *An appeal under this section is a new trial of the issues that resulted in the decision or order being appealed.*

Automotive Business Regulation

- 4 (1)** *The Director may refuse to issue or to renew a license to an applicant if*
- (a) *the applicant is unable to satisfy the Director that the applicant is complying with the laws, including municipal bylaws, that apply to the automotive business to be operated under the license;*
 - (b) *in the Director's opinion, the applicant has contravened the codes of conduct that apply to the automotive business to be operated under the license, or*
 - (c) *a claim has been paid from the compensation fund in respect of the applicant and the applicant has not reimbursed the compensation fund for the amount of the payment.*

12 General Codes of Conduct

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

- (a) *not make any representations, statements or claims that are not true or are likely to mislead a consumer,*

- 16(1)** *A salesperson of an automotive sales business operator must be registered for automotive sales before acting on behalf of the business operator.*
- (2) *A salesperson of an automotive leasing business operator must be registered for automotive leasing before acting on behalf of the business operator.*
 - (3) *A salesperson of an automotive consignment business operator must be registered for consignment sales before acting on behalf of the business operator.*
 - (4) *Repealed AR 1/2006 s15.*
 - (5) *A salesperson who acts on behalf of more than one business operator within the same class of automotive business license must be registered separately in respect of each such business operator but is required to pay only one registration fee annually.*
 - (6) *A salesperson who acts on behalf of more than one business operator shall forthwith identify to the Director each business operator on whose behalf the salesperson acts.*
 - (7) *Where a salesperson ceases to act on behalf of a business operator the salesperson shall forthwith return to the Director the certificate issued in respect of the salesperson's acting for that business operator.*
 - (8) *The registration of a salesperson is automatically cancelled where the salesperson is no longer authorized to act on behalf of any business operator.*

BACKGROUND

1. This Appeal Board met at the scheduled time at 9:00 am on October 31, 2017 to hear the appeal. The Appellant, Mohamed Haji Yusuf ("Yusuf"), had confirmed his intention to attend the hearing but was not present. Several calls were made to attempt to reach Yusuf. Eventually, Yusuf was reached and participated in the hearing by phone. The hearing commenced at 9:55 am.
2. Paula Hale ("Hale"), representing the Director, asked Yusuf if he had received AMVIC's disclosure materials sent to him by email in the weeks leading up to the hearing. Yusuf stated that he did not have the disclosure materials but was agreeable to proceeding with the hearing anyway.
3. By letter to Alberta Credit Specialists Ltd. ("ACS") dated Jul 21, 2017 to the attention of ACS' sole Director, Yusuf, AMVIC summarized events to date as follows:
 - a. *Yusuf applied for an AMVIC business license for retail used car sales and wholesale on or about April 18, 2017. Yusuf previously held an AMVIC business license for ACS (82005689) which was cancelled by the Director of Fair Trading (as delegated). Yusuf is the sole Director of ACS.*
 - b. *Yusuf has been Involved in the sale of motor vehicles for a number of years, he was first registered as a salesperson with AMVIC in 2008. He has been registered as a salesperson with AMVIC on and off since this time, with multiple lapses in the renewal of his registration, the longest of which was greater than 10 months in 2012.*
 - c. *The 2012 lapse of Yusuf's salesperson registration led to his first administrative review with AMVIC. The administrative review was held on December 5, 2012 and resulted in an Undertaking and 12-month conditional salesperson registration. On March 5, 2013, Yusuf agreed to pay the \$400.00 Undertaking but initially declined to sign the Undertaking. The Undertaking stipulated that the Yusuf was to ensure he would renew his registration on time. Additional time was provided for Yusuf to seek legal counsel in regard to his concern relating to the Undertaking. On March 11, 2013, the undertaking was paid and signed and a conditional salesperson registration was issued on March 25, 2013.*
 - d. *In 2014, an administrative review was scheduled to commence on May 21, 2014 regarding an allegation that Yusuf was allegedly selling vehicles for a business he was not AMVIC licensed to sell for. As well, there was an allegation that a consumer was double charged the administration fee and GST as well as charged a \$999.00 security fee. Yusuf did not attend the administrative review. The Investigation team was advised that Yusuf "had left the automotive industry". As Yusuf was no longer in the automotive industry no further administrative action was taken.*
 - e. *A third administrative review was held on May 14, 2015 in regard to the applicant working for A & M Auto Sales and A & I Auto while not having a valid AMVIC salesperson registration to do so. The applicant was granted a salesperson registration on May 20, 2015. During this time, an application for an automotive business license for ACS was being processed. An AMVIC business license was granted for ACS on June 16, 2015.*
 - f. *A forth administrative review was scheduled for February 7, 2017 in regards to the following issues:*
 - i. *AMVIC received a complaint from a consumer (the "complainant") in relation to the non-payment of a lien on a motor vehicle that he traded-in towards the purchase of another motor vehicle from ACS on February 22, 2016. The lien against the trade in was not paid out by the business which resulted in the consumer continuing to have the loan payments withdrawn from his bank*

account. The AMVIC investigator made numerous attempts to contact Yusuf including telephone messages, emails, and two in-person visits to the business address to no avail. After approximately 7 months, the AMVIC Investigator received an email from Yusuf. Due to the cryptic wording of the email the AMVIC investigator requested further documentation and clarification from Yusuf. Yusuf did not respond to the request made by the Investigator. On October 28, 2016, the complainant contacted AMVIC to confirm his financial institute removed the lien.

- ii. The business license for ACS was deemed inactive from February 4, 2016 until March 3, 2016 as the business had not configured or remitted their levies as prescribed in section 136(8) of the FTA.
- iii. Yusuf's salesperson registration was not renewed prior to or on the date of expiry (December 31, 2016) as per the agreed upon Undertaking in 2013.

Prior to the commencement of the forth administrative review, Yusuf was provided with section 128 notice via email and regular mail to which no response was received. Yusuf was also contacted via telephone without success and subsequently a message was left regarding the scheduled administrative review, again with no response. The matter proceeded in the absence of Yusuf.

- g. The Director of the Fair Trading Act (as delegated) determined on March 1, 2017 that the cancellation of the Provincial automotive business license for Alberta Credit Specialist Ltd. was deemed appropriate. The Director's decision was based on the fact that ACS was operating at a business location that was not licensed by AMVIC to conduct the sale of motor vehicles, Yusuf failed to provide documentation to the Investigator when requested, and Yusuf failure to pay off the lien of a vehicle he received on trade in causing unnecessary distress (financial and otherwise) to the consumer. Yusuf was apprised of the 30-day appeal period upon the receipt of this decision as per section 179(1) of the FTA. Yusuf did attempt to appeal this decision however he did not provide Service Alberta with his notice of appeal within the 30-day time line and his appeal was refused.
- h. On or about April 18, 2017, Yusuf completed and submitted an application for an AMVIC business license along with the required fee for ACS.
- i. As part of completing the business license application form Yusuf was required to answer several questions as part of the eligibility requirement for obtaining an AMVIC business license. The application form provides contact information if an individual has questions regarding how to complete the eligibility criteria questions on the application. The application form states:

"Please complete the eligibility questionnaire below. if you answer "Yes" to any questions, please provide details in the space provided or include additional information with your application. If you have any questions, please call the AMVIC office at (780) 466-1140 or toll free 1-877-979-8100."

The eligibility questions are listed as follows:

- i. Have you ever been convicted and/or found guilty of an offence under any law in force in Canada or elsewhere and/or are there any charges pending and/or outstanding warrants? Make sure to include all conditional discharges, absolute discharges and/or stayed charges.

If you have answered "Yes", please provide details outlining each charge/conviction.

AMVIC does a very thorough background check on all applicants

The Automotive Business Regulation, section 17, states that any application containing false or insufficient information may result in the refusal of the registration. Under the Criminal Code, section 361.1, a false declaration constitutes a criminal offence and is punishable by law.

If you have received a record suspension, formerly known as a pardon, from the Parole Board of Canada you are not required to provide Information regarding those convictions."

- ii. Have you ever failed to satisfy a court judgment?*
- iii. Have you been the subject of bankruptcy, receivership proceedings, a consumer proposal, the subject of an application for bankruptcy or insolvency and/or had your wages garnished? If yes, please explain.*
- iv. Have you or are you currently operating a business by any other name? (Name of business/location of business/type of business/date of operation).*
- v. Have you ever applied for and/or held a Provincial Business License and/or Salesperson Registration in Alberta? If yes, please provide the name on the license/registration and the license/registration number.*
- vi. Have you ever applied for and/or held an Automotive Business License and/or Salesperson Registration in any jurisdiction outside of Alberta? If yes, please provide the location, name on the license/registration and the license/registration number.*
- vii. Have you had an application and/or Automotive Business License or Automotive Salesperson Registration suspended, cancelled, or refused by AMVIC or any other provincial regulator? If yes, please explain.*
- viii. Is this an application for a takeover of an existing Alberta Business? If yes, please give license name and number.*

Additionally, the application form 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."

- j. Yusuf responded "No" to all of the aforementioned questions.*
- k. Upon the receipt and review of the business license application for ACS, the prior cancellation of the business license for ACS along with previous salesperson registration were brought to light. Several of the questions, namely: a, e and g accordingly should have been answered 'yes' and an explanation provided.*

- i. On May 19, 2017, a letter prepared by the Director of Fair Trading (as delegated) was sent to Yusuf providing notice as per section 128 of the FTA that administrative action was being considered as per section 127(c) of the FTA. Yusuf was provided with the opportunity to make further representations regarding his April 18, 2017 business license application. An administrative review date of June 6, 2017 was set.
- m. On June 6, 2017, Yusuf informed AMVIC's Administrative Assistant that he was unable to attend the review due to illness. The administrative review was rescheduled and held on July 5, 2017.

Evidence presented and considered during the Administrative Review:

- i. Mr. Yusuf was questioned regarding the spelling of his first name as it was noted that upon review of his business license application, information contained within the AMVIC system and the Justice Online Information Network (JOIN) that information arose for both Mohamed Haji Yusuf and Mohamud Haji Yusuf, both of which names share the same contact information (mailing and email address as well as telephone number) yet had different birth dates. Yusuf indicated that he and his younger brother share the same complete name, aside from the slight spelling difference of their first names. He further explained that he may have assisted his brother in filling out the salesperson registration form which may account for why both Individuals shared the same contact information.
- ii. Yusuf was also questioned regarding the use of the last name Noviello which he utilizes on the ACS website, where he identifies himself as "Mo Noviello" Credit Specialist. Yusuf explained that Noviello was his birth name which was changed to Yusuf when his family converted religion's and moved to Canada. Yusuf acknowledged that he uses both names.
- iii. Yusuf was questioned as to how a consumer would know who they were dealing with if two distinct last names were used. He indicated that lots of people the motor vehicle industry have multiple names. When Yusuf was questioned further about whether this was deceptive to consumers, he did not believe so.
- iv. Yusuf acknowledged that he had lost his AMVIC business license in March 2017 and was currently sub-leasing the building to a business running a repair shop. He did not know what services were being performed or if the business had an AMVIC business license to perform the services being provided. His only concern was having the rent money to pay his lease. When questioned about what happened to his motor vehicle inventory, he stated some were sold at the auction but that there were 5 or 6 cars remaining on site. Yusuf has not updated anything on his website regarding ACS. The Director at this point takes no position to whether or not Yusuf continues to conduct business or not. However, when ACS is searched online the business appears to still be in operation.
- v. Yusuf was unable to recall in any detail the context regarding the previous administrative reviews aside from paying an Undertaking a number of years ago. Upon further questioning, Yusuf acknowledged the main issue of the last administrative review was the significant delay in paying off the lien of the vehicle he accepted as part of a trade-in purchase deal. Yusuf stated he did not pay the lien off simply because he did not have the money.
- vi. Yusuf shared that he has experienced significant health issues, pertaining to his heart, over the past six months that has resulted in multiple hospital visits and surgical interventions which has led to him having to take multiple medications to manage the issues. However, he could not recall the dates of his hospital admissions or surgical interventions.

- vii. Yusuf was asked to explain why he used the name Mohamed Noviello as opposed to Mohamed Yusuf when he sent in a notice of appeal regarding the cancelation of his business license for ACS (82005689). Yusuf could not provide an explanation. On the business license application Yusuf submitted to AMVIC on April 18, 2017 he chose to use the name Mohamed Yusuf.
- viii. Yusuf was questioned regarding his responses to the eligibility questions on the business license application, in particular questions a, e and g. He was unable to recall in any detail his criminal history.
- ix. When asked why he answered "no" to questions e and g (as mentioned on page 6), Yusuf was unable to explain why he answered the questions the way he did.\
- x. Yusuf in closing indicated that he does use both last names and interchanges them but prefers Noviello and plans to legally change his last name to Noviello. He went on to indicate that his health issues contributed to the issues that arose from the last administrative review in that he was unable to make money which ultimately led to him losing his AMVIC business license. The applicant apologized for missing the last administrative review and undertook to adjust his email.

THE DIRECTOR'S OPENING STATEMENT

- 4. Hale stated that the Appellant's application for a business license should be refused for a variety of reasons.
- 5. Stephanie Page and Meghan Doupe will be the Director's witnesses.
- 6. Ms. Page's evidence will include that the Appellant, in his business license application, failed to disclose his criminal history, his license history and his former license application history.
- 7. An applicant's complete licensing history with AMVIC is an important consideration in determining licensure eligibility.
- 8. Ms. Doupe's evidence will include reasons for the most recent cancellation of the Appellant's automotive business license, specifically, that:
 - a. the Appellant failed to pay off the lien on a vehicle taken in on trade causing harm to a consumer; and
 - b. the Appellant failed to cooperate with the investigation.

EVIDENCE OF STEPHANIE PAGE

- 9. Stephanie Page ("Page") stated that she is Manager of Licensing and Consumer Affairs at AMVIC.
- 10. She has been with AMVIC since October 1, 2013.
- 11. She manages 13 staff, nine of whom are in licensing and four Consumer Services Officers dealing with complaints and engaging in dispute resolution.
- 12. Her team is first point of contact for someone making a license application.
- 13. The process for making a license application includes completing an online form and paying a fee.
- 14. Once an application is received, AMVIC staff undertake a name search of the applicant on various databases, undertake an internet search of the applicant and review the applicant's application package including: their financial means, who they propose to employ as salespeople, a criminal record check of all parties proposed to be involved (stakeholders, Directors, salespeople, etc.), and whether they've obtained municipal approval to do business at a specific location.

15. If any positive criminal record check is discovered, a first level triage/assessment is undertaken to assess the potential relevance of the criminal record to the application and proposed automotive business.
16. If, after that assessment, there is a concern, the matter is referred up the AMVIC hierarchy to Page.
17. If Page is concerned that the criminal record may have some bearing on the application, she prepares an application report for AMVIC's Director, making a recommendation and, if applicable, proposing conditions of licensure, etc..
18. In such a circumstance, there would typically be scheduled a face-to-face Administrative Review with the applicant.
19. Yusuf, on his application, wrote that he had no criminal record.
20. On review, it was determined that Yusuf had a criminal record from 2010.
21. Yusuf, on his application, wrote that he had no previous licensure with AMVIC.
22. On review, it was determined that he had previously held AMVIC licenses.
23. Yusuf, on his application, wrote that he had never had a previous AMVIC license cancelled.
24. On review, it was determined that he did have a previous AMVIC license cancelled.
25. Following these determinations, Page wrote an "Application Report – Licensing" dated April 27, 2017.
26. The outcome recommended was a "Face-to-face review of applicant and history to determine risk to consumers and employers."
27. Page reviewed the application form for automotive business licensure and read the full question regarding history of convictions, specifically:
 - a. *"Have you ever been convicted and/or found guilty of an offence under any law in force in Canada or elsewhere and/or are there any charges pending and/or outstanding warrants? Make sure to include all conditional discharges, absolute discharges and/or stayed charges."*

If you have answered "Yes", please provide details outlining each charge/conviction.

AMVIC does a very thorough background check on all applicants.

The Automotive Business Regulation, section 17, states that any application containing false or insufficient information may result in the refusal of the registration. Under the Criminal Code, section 361.1, a false declaration constitutes a criminal offence and is punishable by law.

If you have received a record suspension, formerly known as a pardon, from the Parole Board of Canada you are not required to provide information regarding those convictions."

28. At the face-to-face administrative review hearing held on July 5, 2017, Yusuf had no explanation or excuse for answering no to the above question.
29. Page stated that AMVIC's criminal record search revealed that Yusuf had the following Criminal Code convictions in 2010: trafficking, obstruction of a peace officer, failure to attend court and failure to comply with a recognizance.
30. When asked by Hale whether the above convictions would automatically prohibit AMVIC licensure, Page replied "not necessarily, but they would likely lead to an administrative review".
31. Page went on to say that failure to disclose such convictions is a big concern. Honesty and integrity are substantial considerations for AMVIC when assessing an applicant.
32. Page stated that the Appellant had a previous automotive business license cancelled on March 1, 2017 following a consumer complaint received on June 24, 2016 and a

subsequent administrative review held on February 7, 2017 at which the Appellant did not attend.

33. The June 24, 2016 consumer complaint involved a customer who had traded in a vehicle to ACS on February 22, 2016 on the premise that ACS would pay off the lien on that vehicle.
34. ACS did not pay off the lien until October 26, 2016 causing the consumer to suffer damages, including having to make several additional loan payments on the traded-in vehicle and impacts on the consumer's credit history.
35. Yusuf ignored the AMVIC investigator's requests for information through the investigation and failed to attend the February 7, 2017 administrative review.
36. Accordingly, the Appellant's license was cancelled on March 1, 2017.
37. Yusuf also had a previous AMVIC salesperson registration cancelled.
38. In each of 2010, 2011, 2012, 2015, 2016 and 2017, Yusuf allowed his salesperson registration to lapse, sometimes for a few days, other times for several months.
39. During these lapses, Yusuf would be working as an automotive salesperson without a license to do so.
40. That puts himself and his various employers in jeopardy of being charged with an offence.
41. Page recounted a chronology of various AMVIC encounters with Yusuf respecting his salesperson registration lapses:
 - a. On December 5, 2012, the first administrative review was held due to lapses in registration. A 12-month conditional registration was granted and a \$400 undertaking levied.
 - b. On March 5, 2013, Yusuf attended at the AMVIC offices to pay the \$400 undertaking but refused to sign the undertaking. As both were required, Yusuf was given more time to seek legal counsel to discuss his concerns.
 - c. On March 11, 2013, the undertaking was signed and the levy paid.
 - d. On March 25, 2013, a conditional registration was issued.
 - e. On March 24, 2014, a second administrative review was requested due to a consumer complaint alleging Yusuf was selling vehicles for a business he was not AMVIC licensed to sell for. The consumer was allegedly charged double the "admin fee and GST as well as a \$999 security fee". An administrative review was scheduled for April 29, 2015 but Yusuf did not attend. The investigation team was advised that Yusuf had left the automotive industry so no further action was taken.
 - f. On March 20, 2015, a third administrative review was requested as it was determined that Yusuf was working at A&M Auto Sales and A&I Auto. An administrative review was held on May 14, 2015 and registration was issued on May 19, 2015.
 - g. On December 6, 2016, a fourth administrative review was requested due to the June 24, 2016 complaint referenced above.
 - h. AMVIC's March 1, 2017 decision later stated "Should AMVIC receive an application from Mr. Yusuf to renew his salesperson registration, that application will be REFUSED".
42. Yusuf has demonstrated a pattern of disregard for AMVIC's regulatory role, including allowing licensure to lapse, ignoring investigations and failure to attend administrative reviews.
43. Another issue which caused AMVIC some concern was confusion regarding Yusuf's use of two different names: "Mohamed Haji Yusuf" and "Mo Noviello" and the name of Yusuf's brother (also an AMVIC applicant), "Mohamud Haji Yusuf".
44. Both Mohamed Yusuf and Mohamud Yusuf shared the same home address, same email address, same middle name and same employer, although their birthdates are different.
45. Yusuf regular use of the name Mo Noviello in the conduct of his automotive business could cause confusion to the public and puts the public at risk.

46. If a consumer buys a vehicle from an unlicensed salesperson, AMVIC can't help or provide access to AMVIC's compensation fund.
47. Mo Noviello is not a name registered with AMVIC as licensed salesperson.

EVIDENCE OF MEGHAN DOUPE

48. Ms. Doupe ("Doupe") stated that she has been an investigator with AMVIC for approximately four years.
49. She is a peace officer.
50. Before joining AMVIC, she was a peace officer with Service Alberta, working with Consumer Services.
51. After joining AMVIC, she got involved with a consumer complaint involving the Appellant, the specifics of which were detailed in an "Application Report – Investigations" dated January 12, 2017.
52. In the January 12, 2017 report, Doupe wrote:

"Consumer purchased a vehicle on February 22, 2016 and on that day, traded in a 2008 Honda Civic. The payout was noted on the Bill of Sale in the amount of \$9,659.43. The supplier did not pay out the lien until October 3, 2016, 224 after consumer traded in the vehicle. After several attempts, supplier has not provided any response or documentation in relation to the complaint. Supplier is also located at a different address that the address documented on the AMVIC license."
53. In that same Report, Doupe provided the following chronology:
 - a. On February 22, 2016, consumer, Hassan Mustafa, purchase a 2012 Chevrolet Cruze, from Supplier, Alberta Credit Specialists;
 - b. Consumer traded in a 2008 Honda Civic, which is listed on the Bill of Sale as a trade in, in the amount of \$9,659.43;
 - c. After purchase, consumer realized that the lien for his Honda Civic had not been paid off and payments were taken out of his account;
 - d. Consumer states that he had to close his bank account so the bank would stop taking payments out, but he received several phone calls and letters from creditors;
 - e. On October 28, 2016, consumer received a letter that the lien for the Honda Civic had been paid out on October 3, 2016, approximately 7 months after the consumer traded in the vehicle;
 - f. Investigator Doupe attempted to contact supplier several times, however, supplier would not cooperate:
 - i. September 12, 2016 – email sent to supplier asking for a response
 - ii. September 26, 2016 – phone call to supplier asking for a response
 - iii. October 10, 2016 – phone call to supplier asking for a response
 - iv. October 26, 2016 – email sent to supplier asking for a response
54. On September 27, 2017, Doupe and fellow investigator Weir attended the business at 8219 – 118 Avenue, Edmonton. They met with a salesperson named Caesar. Caesar stated that ACS does not work from that office and are located in the same parking lot as Easy Motors at 9035 – 127 Avenue NW, Edmonton;
55. Doupe pulled the supplier's AMVIC business license and determined that the 127 Avenue location is not documented on the license;
56. Doupe's concerns with the Appellant included not removing the lien on the trad-in vehicle for several months, not cooperating with investigators and operating from an unlicensed location.

EVIDENCE OF MOHAMED YUSUF

57. Yusuf advised that the 127 Avenue location was used for ACS storage only.
58. Yusuf advised that in 2017, he had applied for a pardon in respect to his criminal convictions. He thought that cleared his record.
59. With respect to the 2008 Honda transaction, Yusuf says he was “scammed” and that the consumer had a bad credit record to begin with.
60. Yusuf stated that he did not have the money to immediately pay off the lien.
61. Yusuf stated that he helped his brother, Mohamud, with his AMVIC application. Mohamud was a manager at Hertz and wanted to work weekends selling cars with Yusuf.
62. Yusuf acknowledges he was routinely late paying AMVIC fees. He states that September is the worst time to have levies due because there's little money coming in.
63. With reference to not cooperating with investigators, Yusuf stated that he had several hundred unanswered emails at one point and that he was never called by investigators.
64. Yusuf stated that he had recent health concerns, but is better now.
65. With respect to his last name, Yusuf states that he is in the process of trying to change his name legally back to Noviello.
66. Yusuf states that he was a refugee and when he and his family arrived in Canada, Immigration officials mistakenly changed his name to Yusuf.

THE DIRECTOR'S ARGUMENTS

67. The Appellant failed to disclose on his automotive business license application:
 - a. That he had a criminal record
 - b. That he had a license history with AMVIC
 - c. That he had a previous AMVIC license cancellation
68. The Appellant offered no reasonable justification for that lack of accuracy/truth.
69. Yusuf does not give due regard to AMVIC's requirements or jurisdiction.
70. Yusuf's recent behavior is entirely consistent with his past conduct with AMVIC, including lapses of licensure, consumer complaints and no cooperation with AMVIC investigators.
71. There are more than sufficient reasons to uphold the Director's decision to deny the Appellant's application for an automotive business license.
72. Yusuf has breached s. 127(b)(4) and (5).
73. Mr. Yusuf's own evidence is that he entered into a transaction with a consumer knowing that he didn't have the money to pay off the lien.
74. While the lien was paid off some 6+ months later, the consumer suffered financial loss totaling ~\$500 and had negative impacts on his credit rating.
75. Yusuf's failure to respond to AMVIC investigators is an aggravating factor.
76. A lot of email message in an inbox is not an excuse for failure to response to a regulator.
77. Yusuf's conduct is simply not acceptable in a regulated industry.
78. The Fair Trading Act exists to protect consumers.
79. Registration and licensure with AMVIC is a privileged, not a right.
80. Applicants are given the benefit of the doubt, but, with a pattern of disregard of AMVIC's rules and authority by Yusuf and with a consumer harmed, there is no longer any doubt that Yusuf should not have an automotive business license.
81. The Honda lien transaction represents a breach of Section 12 of the Automotive Business Regulation and s. 6(4) of the Fair Trading Act.
82. Compliance with the law and honesty on your license applications – those are the basic requirements of a licensee. Yusuf failed on both.

THE APPELLANT'S ARGUMENTS

83. Yusuf acknowledged that he had lost the trust of AMVIC.
84. He stated that he paid an \$800 penalty to AMVIC but was only given a receipt for \$400.
85. He referred to a CBC news story characterizing AMVIC's Director at the time, John Bachinski, as a "tyrant".
86. With respect to the lien issue, Yusuf says that he was "robbed", but that he paid the lien out of his own pocket. It took him six months to save the money to do so.
87. Yusuf also states that he fixed the complainant's Equifax issue.

ANALYSIS AND CONCLUSIONS

88. This Appeal Board finds as follows:
 - a. The Appellant has an unfortunate and unenviable pattern and history of non-compliance with AMVIC's licensing and levy rules, with lapses in registration in six of the past eight years (three of which in breach of an undertaking given to AMVIC in 2013 in violation of s. 127(b)(iv) of the Fair Trading Act), four administrative reviews since 2012 and a record of non-responsiveness to AMVIC and its investigators.
 - b. In breach of s. 126(3) and s. 127(b)(iii) of the Fair Trading Act, the Appellant lied on his most recent AMVIC application for an automotive business license, responding untruthfully to questions concerning his criminal record, his previous license history with AMVIC and whether a previous AMVIC registration had ever been cancelled.
 - c. Yusuf's use of both names "Yusuf" and "Noviello" in the conduct of his automotive business is confusing to consumers and is potentially misleading or deceptive in breach of s. 6(4) of the Fair Trading Act.
 - d. Yusuf's failure to pay off a lien in a timely manner on a trade-in vehicle despite assurance to a consumer that he would represents breaches of Section 12(a) of the Automotive Business Regulation and s. 6(4) of the Fair Trading Act.
 - e. While Yusuf's words promising to hereafter comply with the legislation and AMVIC's processes sound sincere, his past and present conduct paint a picture of an individual either unwilling or incapable of operating within a regulated industry.

Based on all of the evidence and arguments, this Appeal Board concludes that:

89. AMVIC's decision to not issue an Automotive Business License Alberta Credit Specialists Ltd. is reasonable and appropriate in the circumstances.

DECISION

90. For the above reasons, the July 21, 2017 decision of AMVIC to not issue an Automotive Business License to Alberta Credit Specialists Ltd. is confirmed. No order is made as to costs.

ISSUED and DATED at the City of Edmonton in the Province of Alberta this 10th day of December 2017 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)
Caren Mueller
Nick Tywoniuk