

Re: In the Matter of an Appeal by Pelsco Holding Corp. from the May 19, 2016 Decision of the Director of Fair Trading (as delegated) to not issue an Automotive Business License to Pelsco Holding Corp.

April 28, 2017

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

Representing the Appellant, Pelsco Holdings Corp.: Victoria Merritt, Student-at-Law, Reynolds Mirth Richards & Farmer LLP

Representing the Respondent, the Director of Fair Trading as delegated to the Alberta Motor Vehicle Industry Council: Vivian R. Stevenson, Duncan Craig LLP

Appeal Heard: 23 March 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 May 19, 2016 decision of the Director of Fair Trading (as delegated) to not issue an automotive business license to Pelsco Holdings Corp..

THE ISSUES

Should this Appeal Board vary, confirm or quash the May 19, 2016 decision of the Alberta Motor Vehicle Industry Council (AMVIC) to not issue an automotive business license to Pelsco Holdings Corp.?

RELEVANT LEGISLATION

Fair Trading Act

- 104(1)** *No person may engage in a designated business unless the person holds a licence under this Act that authorizes the person to engage in that business.*
- (2)** *If required to do so by the applicable regulation, a person who engages in a designated business at more than one location must hold a separate licence issued under this Act for each location that authorizes the person to engage in that business.*
- 127** *The Director may refuse to issue or renew a licence, may cancel or suspend a licence and may impose terms and conditions on a licence 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 licence 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 licence and before a licence 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 licence or renewal of a licence,*
- (b) *whose licence is made subject to terms and conditions,*
- (c) *whose licence 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

- 3 (7)** *A person who holds an automotive business licence is not authorized to carry on any class or classes of activities that are not specified on the licence.*
- 4 (1)** *The Director may refuse to issue or to renew a licence 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 licence;*

- (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 licence, 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.*
 - (2) The Director may require an applicant for a class of automotive business licence to furnish a security in a form and amount approved by the Director.*
- 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 licence 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

Pelsco Holding Corp. applied to AMVIC for an automotive business license (wholesale) on April 7, 2016. Mr. Fred Pels is the principal behind Pelsco Holding Corp.. Mr. Pels operated as an automotive salesperson in Alberta between 2003 and 2013, but was only licensed for approximately two of those years. Operating as an unlicensed automotive salesperson in Alberta is a breach of the Fair Trading Act and the Automotive Business Regulation. In 2013, Mr. Pels was convicted of offences under S. 104(1) and 161(g) of the Fair Trading Act as a result of two automotive consumer transactions, specifically, that he unlawfully engaged in the general automotive business without being the holder of an automotive sales license. It is further alleged that Mr. Pels took cash from two consumers in exchange for services or parts that were neither rendered nor delivered, thereby disadvantaging the consumers and/or Mr. Pels' former employer.

AMVIC is concerned that Mr. Pels is a risk to the public and, accordingly, that his company, Pelsco Holdings Corp., should not be granted an automotive business license.

Mr. Pels, on behalf of Pelsco Holdings Corp., argues that a license should be issued, that the 2013 events were almost four years ago, that Mr. Pels has already been punished for those occurrences, that those occurrences related to Mr. Pels' activities as a salesperson, not as a licensed business, that Mr. Pels is prepared to be fully compliant with the regulator, and that an automotive business license should be issued.

This Appeal Board was constituted to consider Pelsco Holdings Corp.'s appeal of AMVIC's decision not to issue an automotive business license to Pelsco Holdings Corp..

AGREED STATEMENT OF FACTS

AMVIC and the Appellant submitted an Agreed Statement of Facts as follows:

1. This appeal is from the decision of the Director of Fair Trading (as Delegated) to refuse to grant a license to Pelsco Holdings Corp. ("Pelsco") pursuant to section 127 of the Fair Trading Act, RSA 2000, c F-2 (the "FTA").
2. On April 7, 2016, Pelsco applied for an AMVIC wholesale business license.
3. Business records of AMVIC ... disclose the following salesperson registration information with respect to Fred Pels:
 - a. Salesperson temporary registration was issued October 28, 2003, and suspended on March 15, 2004 due to Mr. Pels' failure to attend or complete the required Salesperson course;
 - b. There is no history of Mr. Pels being registered with AMVIC as a salesperson between March 15, 2004 and November 23, 2007;
 - c. Salesperson registration was issued to Mr. Pels on November 23, 2007 and expired November 30, 2008 due to non-renewal;
 - d. There is no history of Mr. Pels being registered with AMVIC as a salesperson between December 1, 2008 and June 9, 2011;
 - e. Salesperson registration was issued to Mr. Pels on June 10, 2011 and expired November 30, 2011 due to non-renewal; and
 - f. There is no history of Mr. Pels being registered with AMVIC as a salesperson after December 1, 2011.
4. Mr. Pels was the sole director and shareholder of Via Luxe Motors Ltd, which held an AMVIC business license from November 23, 2007 to November 30, 2008.
5. Mr. Pels' salesperson registration with AMVIC was previously cancelled by the Director as Delegated by letter of September 4, 2013.
6. In early 2013, an AMVIC investigation resulted in five charges being laid under the FTA and the Criminal Code arising out of two sales transactions in 2012.
7. Counts 1, 2 and 3 of the Information related to a transaction on July 25, 2012 involving a consumer who will be referred to in this Agreed Statement of Facts as "TW". At the time of the transaction, Mr. Pels was working for a company called RCM Auto Ltd "RCM". Mr. Pels sold TW a 2009 GMC Yukon for \$29,278.06. Mr. Pels then agreed to sell TW tires and rims for the Yukon for \$7,700. There was no record of this transaction. TW paid Mr. Pels \$7,700 but the tires and rims were never delivered to TW. Mr. Pels will provide further oral testimony with respect to the context in which the funds were retained.
8. Counts 4 and 5 in the Information related to a transaction on August 22, 2012 involving a consumer who will be referred to in this Agreed Statement of Facts as "TJ". Mr. Pels sold TJ a 2009 Infiniti G37 for \$39,065.51. Mr. Pels arranged insurance on the vehicle and collected \$785.25 in cash from TJ to be provided to the insurance broker. Mr. Pels did not forward the cash to the insurance broker and left his employment with RCM. RCM paid for the insurance. Mr. Pels will provide further oral testimony with respect to the context in which the funds were retained.

9. On December 2, 2013, Mr. Pels pleaded guilty to Counts 3 and 5 of the Information for engaging in the automotive business without being the holder of a business license, contrary to section 104 of the FTA, and thereby committing an offence under section 161 (g) of that Act.
10. Mr. Pels paid the required fine of \$1,000.00 for each Count and paid stand-alone restitution to TWand to RCM in the amount of \$8,485.25. The Criminal Code charges relating to fraud and theft, being Counts 1, 2 and 4, were withdrawn.
11. Mr. Pels has no criminal record.

EVIDENCE

12. Ms. Stevenson referred to and commented on several Exhibits included as part of the Agreed Statement of Facts:
 - a. AMVIC records indicate that Mr. Pels first applied to be registered as an Automotive Salesperson on October 20, 2003. A temporary registration was issued but since Mr. Pels did not complete the required salesperson course, the temporary registration was terminated on March 19, 2004.
 - b. An automotive salesperson license was issued to Mr. Pels in November 2007 and expired at the end of its term.
 - c. An automotive salesperson license was issued to Mr. Pels in June 2011 and was terminated following Mr. Pels' ceasing to be employed by a licensed automotive business in or about December 2011.
 - d. On March 25, 2013, Mr. Pels status with AMVIC was changed to "Do Not Renew" pending a meeting between Mr. Pels and AMVIC's Executive Director.
 - e. A hearing between AMVIC's Executive Director and Mr. Pels commenced on June 4, 2013 but was adjourned to provide Mr. Pels with the opportunity to resolve various legal matters. By correspondence dated June 6, 2013, Mr. Pels was advised by AMVIC that the onus to reconvene the hearing fell to Mr. Pels and that as his registration was already expired, he was not a registered salesperson and could not be working as such.
 - f. On July 31, 2013, Mr. Pels contacted the Executive Director requesting that the hearing be reconvened and accordingly, a new hearing was scheduled. Correspondence dated August 19, 2013 was forwarded to Mr. Pels by regular mail and email. The hearing was scheduled to reconvene on September 4, 2013 at 9:00 am. Mr. Pels failed to attend the hearing.
 - g. By letter to Mr. Pels dated September 4, 2013, AMVIC cancelled Mr. Pels' salesperson registration.
 - h. Pelsco's Business Plan accompanying its application for an automotive business license included lofty sales targets. The plan was highly speculative and relied on credit available on the strength of an AMVIC license.
 - i. A bank account verification form accompanying Pelsco's application for an automotive business license indicated a company account balance of only \$63.97.
13. The Appeal Board heard from two witnesses: Fred Pels on behalf of Pelsco and Richard Thiessen on behalf of AMVIC.
14. Evidence of Fred Pels –
 - a. He plans for Pelsco to be involved in wholesale sales of automobiles only, principally dealer to dealer transactions.

- b. Focus will be on specific criteria vehicles to meet the booking parameters for banks.
- c. He intends to find vehicles well below book value to warrant/justify higher credit.
- d. Says he's known in the industry for finding good value vehicles.
- e. He will not deal directly with consumers.
- f. He has extensive experience in the automotive industry, having worked in the field between 2003 and 2013.
- g. He worked at Westside Mitsubishi where he was their top salesperson and promoted to finance manager at age 21.
- h. He has spent time with other dealer groups in both Edmonton and Calgary in management positions.
- i. Over the years, he has sold over 3000 vehicles and dealt with thousands of consumers.
- j. He has never had any other complaints at AMVIC.
- k. He has significant contacts in and understands the industry.
- l. He's heard from friends and former colleagues in the industry that he ought to get back in the business, so he decided to do so.
- m. He formed Pelsco and contacted AMVIC, asking if he could apply for an automotive business license. AMVIC said "yes, as long as you're open and honest."
- n. He was open and honest on his Automotive Business Profile Form, the AMVIC application.
- o. He did not lie or inflate any numbers.
- p. The bank balance of Pelsco is purposely low now for tax planning and other purposes because it's not yet in business.
- q. He is very liquid personally and is prepared to make shareholder loans to Pelsco.
- r. With respect to paragraph 7 of the Agreed Statement of Facts –
 - i. The TW funds in question were not retained directly by Mr. Pels.
 - ii. The transaction occurred in July.
 - iii. The customer was not happy with the time it was taking to get the wheels and tires and cancelled the order.
 - iv. Mr. Pels states that he was told by his employer to keep the tire/wheel money in lieu of other moneys owed to Mr. Pels by the employer. Mr. Pels states that he was owed up to \$15,000 by RCM when he left their employ.
 - v. TW was in the hands of the dealer, RCM. RCM told Mr. Pels they would take care of TW's issues.
- s. With respect to paragraph 8 of the Agreed Statement of Facts, Mr. Pels states that he was "air-headed", that he completely forgot about the money. RCM eventually paid the insurance directly.
- t. His relationship with RCM did not end well.

On cross-examination by Ms. Stevenson, Mr. Pels stated:

- u. With his extensive experience in the automotive industry, he knew that AMVIC registration was required.
- v. He didn't register as a salesperson because he was busy, moving from store to store.
- w. He acknowledges that he wasn't diligent with AMVIC licensing.
- x. He didn't know that not being registered was a breach of the Fair Trading Act.
- y. After 2008 he was in the industry only sporadically.
- z. With respect to the TW incident, he received \$7,700 in cash. Paperwork for the transaction was through RCM. He purchased the tires and wheels through Extreme Velocity and Custom Detailing.

- aa. He left the employ of RCM knowing that TW had never received the tires and wheels.
- bb. He spoke with TW and explained the situation.
- cc. He was advised by his lawyer not to pay anything until the various Criminal Code and Fair Trading Act charges were dealt with.
- dd. He entered into a plea bargain and plead guilty to the Fair Trading Act charges with the Criminal Code charges being withdrawn.
- ee. He acknowledged providing a written statement to an AMVIC investigator as follows:
"TW had purchased a GMC Yukon initially with warranty. However, he returned and decided to purchase wheels in lieu of the warranty. The wheels were more expensive by more than \$1,200 over the warranty. He then decided he wanted bigger wheels totaling approximately \$7,700. He came back to pay the difference. Wheels were on back-order. The time to get them was too long. He cancelled. I was unable to refund him before I left and was under the impression that RCM refunded the \$..."
- ff. In response to the investigator's follow-up question "How did you pay the supplier for the wheels TW purchased?", Mr. Pels wrote: "I put \$2,300 on credit card and paid the balance with money order." In response to a further follow-up question "What did you do with the cash he gave you?", Mr. Pels wrote: "Kept \$2,300 to pay my credit card, the rest went to the money order."
- gg. Mr. Pels had no explanation as to why there was no reference to insurance on TJ's Bill of Sale notwithstanding that insurance had been paid for.
- hh. In response to questions about his financial means to support Pelsco, Mr. Pels stated he had access to more than sufficient personal capital and credit. He would issue shareholder loans to Pelsco if/when the business is operational.
- ii. With respect to failing to attend a September 4, 2013 hearing with AMVIC, Mr. Pels acknowledges that he had notice of the hearing but failed to attend.
- jj. He's prepared to post additional security. He has already qualified for a bond through Intact.
- kk. He paid restitution to preserve his reputation.

15. Evidence of Richard John Thiessen –

- a. He is Director of Investigations at APEGA and has been in that role since December, 2013.
- b. Prior to that, he had an investigator role at AMVIC.
- c. He is familiar with the TW matter.
- d. He met with TW on December 11, 2012 and obtained a written statement from TW as follows:
"I, TW, purchased my SUV from \$27,850 before taxes and paid cash for extended warranty and rims from the sales person (Fred). This transaction started on a Thursday and me and my friend (RH) went to go see the dealer (Fred) at RCM auto. We looked at some trucks online that were up for sale at an auction. I found one I was interested in. Fred told me it was going up for sale the following day, so if I wanted it he needed a down payment for the truck. So, I gave him (Fred) 5,000 dollars for the down payment and a Wednesday and he (Fred) called me on Friday and had the truck.

When I came to pick the truck up he (Fred) asked if I wanted an extended warranty. I said yes. He (Fred) said that I should just use that 5,000 dollars for the warranty. I said ok. Then he (Fred) asked if I wanted any add on like body kit

or rims or anything else. I said yes to rims. So, I gave Fred an additional 2,700 dollars for the rims and he said they would be in on the following Monday, which they weren't.

Fred stopped answering and returning my phone calls so I contacted the manager of the company at RCM (SC) and he informed me that there is no warranty on the vehicle or no rims were ordered. SC told me that Fred stopped coming into work and there were two other people that he has done this to as well. SC was talking to Fred and he says Fred is going to pay me back but he has not. The total amount that I gave Fred in cash was 7,700. The only papers that I received from the company was my bill of sale and a receipt for the extended warranty for 3,978.45 dollars. I did not receive any confirmation of my loan at TD Auto Finance. Although I did contact TD Auto and the loan is real. I also did successfully register the vehicle in my name.

My Friend (RH) was a witness that was present when I gave Fred the money. RH worked with Fred before at RCM auto and knows SC. So, we both thought it was a very trustful deal. I do not know Fred or SC. I do not have receipts for the money that I gave Fred the deal except for the warranty. I am a first time vehicle buyer from a dealership and did not think it was possible that a deal could take and keep money from you.

Q. What date did you buy the Yukon?

A. I'm not 100% positive. I think it was around the middle of June 2012.

Q. How come you waited until now to report it?

A. I was talking to Fred and SC and they were leading me on that I was going to get the rims and tires and then SC led me on that I was going to get the money back from Fred.

Q. Do you know where your \$7,700 went to?

A. \$3,978.45 went to warranty, \$1,000 was to go to Fred for commission, \$4,615 was for rims and tires but I only gave him \$2,700 for the rims and tires and the remainder of the cost was put on my loan.

Q. What documents or receipts were you given?

A. A bill of sale and an extended warranty contract.

Q. Nothing else?

A. No.

Q. Do you have a loan that the dealer processed on your behalf?

A. Yes. TD Financial.

Q. Are you making payments?

A. Yes.

Q. Why did you pay with cash?

A. I don't know. I trusted him because RH knew him. I borrowed \$8,000 from RH to make the SUV purchase. I am paying him back in payments.

Q. Tell me what SC's reaction was when you said you were going to report this to AMVIC?

A. He was very upset. He said if I was going to go this route, he would do nothing to help me. He wasn't helping me anyhow.

Q. Anything you want to add?

A. Not really but I'm going to try and sue Fred."

- e. He met with SC at RCM Auto and received an email statement from SC on January 7, 2013 including the following:

"TW: purchased a 2009 GMC Yukon on July 20, 2012. Some time after that date I received a phone call from TW asking about wheels and tires that he had Fred purchasing for him. I quizzed TW about this explaining that nothing was put in his financing or on the bill of sale. It was at that time that he told me he had left Fred \$7500 in cash to purchase him wheels and for a warranty. I was able, at some point later within a week to speak with Fred on the phone and he admitted that he had taken the money and he would talk with TW as they had some sort of prior relationship. I believe that conversation has never taken place...."

Fred just stopped showing up at work some time in early September, and after repeated promises to return the money he has stopped answering the phone, and as of this point has not repaid or returned any of the cash."

- f. He has no recollection of hearing anything from SC about any wages or commissions owed to Mr. Pels.
- g. He swore an Information before a Justice of the Peace on March 13, 2013 alleging that Fred Pels contravened various provisions of the Criminal Code of Canada and Alberta's Fair Trading Act.

On cross-examination from Ms. Merritt, Mr. Thiessen stated:

- h. None of the witness statements he took in this matter were sworn statements.

THE RESPONDENT'S ARGUMENTS

Ms. Stevenson argued:

- 16. AMVIC's refusal to issue a license to Pelsco was in the public interest for three reasons:
 - a. Mr. Pels had been actively operating in the automotive industry for nine (9) years, only two (2) of which he was licensed to do so. This calls into question Mr. Pels' governability;
 - b. In 2013, Mr. Pels plead guilty to two charges under the Fair Trading Act for engaging in the automotive business without being the holder of a business license;
 - c. Mr. Pels' business plan submitted to AMVIC as part of his application for a business license was overly optimistic and under-financed. Mr. Pels demonstrated he had very limited means to fund the proposed business.
- 17. A license to engage in the automotive business in Alberta is a privilege, not a right.
- 18. AMVIC has a duty to the public to screen potential licensees.
- 19. Past conduct of license applicants is a relevant consideration, including governability, past misconduct and risk to the public.
- 20. Mr. Pels explanation as to why he was not licensed for seven out of nine years is insufficient. He knew or ought to have known that a salesperson license was required. Licensure is the most basic of requirements for automobile salespersons in Alberta.
- 21. There are approximately 7,800 dealers regulated in Alberta by AMVIC. It is in the public interest that they be registered with AMVIC and tracked via licensure.
- 22. Mr. Pels failed to show up for an administrative review hearing without excuse or explanation.
- 23. Mr. Pels convictions in 2013 under the Fair Trading Act are serious matters.
- 24. Of particular concern is that Mr. Pels:
 - a. Took and kept cash from at least two consumers
 - b. With respect to TW, he didn't consider his actions to be improper

- c. He didn't take responsibility
 - d. He blamed his employer, RCM
 - e. He only made restitution as part of a plea deal to avoid criminal convictions.
25. In Mr. Pels' statement to AMVIC's investigator, Mr. Thiessen, he made no reference to being owed wages or commissions by RCM.
 26. Pelsco's business plan is vague, with no evidence of available funds.
 27. If AMVIC issues an automotive business license to Pelsco, organizations granting credit may be misled as to Pelsco's credibility and/or legitimacy.
 28. There's no character evidence by any of Mr. Pels' past employers or others re. his reputation or reliability.
 29. Mr. Pels disregard for the regulatory framework and failure to comply are serious concerns.
 30. Mr. Pels is the directing mind of and has a controlling interest in Pelsco.
 31. Mr. Pels past misconduct is relevant to the decision about whether or not to issue an automotive business license to Pelsco.
 32. AMVIC is the gatekeeper of the automotive industry in Alberta and is subject to criticism if its member salespersons or dealers misconduct themselves.
 33. Mr. Pels past conduct led the Director to form the reasonable conclusion that Mr. Pels is a risk to the public.
 34. The Director opposes the issuance of an automotive business license to Pelsco, even with conditions. AMVIC has enough challenges regulating its members without imposing an obligation on AMVIC to monitor conditions.
 35. AMVIC has concerns that granting an automotive business license to Pelsco would leave Mr. Pels in a position of operating in the automotive industry unsupervised. For those periods of time when Mr. Pels was either a licensed salesperson and/or employed by a licensed dealer, he was, at a minimum, under some degree of supervision.

THE APPELLANT'S ARGUMENTS

Ms. Merritt argued:

36. Issuing an automotive business license to Pelsco is not contrary to the public interest.
37. Mr. Pels was very candid in his business license application to AMVIC. He disclosed his AMVIC license history and Fair Trading Act convictions.
38. AMVIC's role has evolved. Mr. Pels understands that he needs to comply with AMVIC rules.
39. Mr. Pels history with AMVIC is largely as an automotive salesperson. The current application and appeal relates to an automotive business.
40. With respect to his 2013 convictions under the Fair Trading Act, Mr. Pels does not minimize or trivialize the charges. The Crown withdrew related criminal charges. Mr. Pels promptly paid fines and restitution.
41. The charges arose from a misunderstanding between Mr. Pels and the complainant.
42. With respect to the funds that were retained in the two consumer transactions, Mr. Pels had no intent to defraud or deceive consumers. His reputation as a salesperson and businessman is important to him personally, and is integral to his economic success. The automotive sales world is small and a reputation for honesty and fair dealings is important.
43. Mr. Pels further submits that the 2013 allegations were the result of a misunderstanding between Mr. Pels and RCM, and have been addressed and resolved.
44. With respect to the incident with TW, Mr. Pels received those funds on the understanding that they were to be retained by him as partial payment for employment wages owed to him by RCM. Mr. Pels had no further contact with TW after September 1, 2012 and was unaware there were any concerns with respect to that transaction until AMVIC contacted him regarding the investigation.

45. Funds paid by the other complainant were retained by Mr. Pels inadvertently when he left the employ of RCM Auto Ltd..
46. In both instances, Mr. Pels had understood that RCM would be ensuring the consumers received appropriate value for the funds provided.
47. Almost 4 years have passed since those incidents/convictions and the charges have been resolved.
48. The charges with respect to fraud and theft were withdrawn, and Mr. Pels paid the required fines and restitution immediately.
49. Also with respect to the 2013 events, there is no direct evidence from TW or TJ. This appeal is not a retrial of the 2012/2013 incidents that have already been dealt with.
50. The incidents leading to the charges are one-time events over a long history in the auto industry.
51. AMVIC ought not refuse to issue a business license as a punitive measure. Doing so subjects Mr. Pels to double jeopardy. He's already satisfied his personal obligations pursuant to the Fair Trading Act convictions.
52. Pelsco is a new business with similar risks inherent to any new venture. Being risk-free is not a pre-requisite to being issued a business license from a regulator.
53. Mr. Pels is willing and able to post security to AMVIC to protect AMVIC's compensation fund.
54. There are no complaints pending against Mr. Pels.
55. Mr. Pels' application for this license was made in order to comply with AMVIC's regulatory requirements, and he has treated the process seriously.
56. Four years after the incidents with TW and TJ occurred, Mr. Pels wants to move forward with his career and in the industry. Mr. Pels respectfully submits that it is his future, not his past, which should be the primary consideration on this appeal.
57. There is no evidence of a pattern of behaviour or any indication of future risk. This process should not be used as a further punishment for past deeds.
58. With respect to Mr. Pels governability, he deserves a chance to demonstrate compliance subject to any conditions this Appeal Board may dictate.
59. Pelsco was incorporated on March 24, 2016 as an intended wholesale automotive dealer located in Edmonton, Alberta. Pelsco's business focus will be to sell luxury vehicles to dealers. It will not sell vehicles or offer repair services directly to consumers.
60. Mr. Pels has the skills, knowledge, and contacts to make a positive contribution in the automotive industry.
61. Mr. Pels has been an active member of the automotive industry for over a decade, and has considerable contacts and expertise in the area of motor vehicle sales.
62. Mr. Pels has no criminal record. He meets the requirements under the FTA for an automotive business license.
63. If the Appeal Board decides to issue a license to Pelsco, Pelsco will have approximately \$130,000 in available credit, as well as a corporate account with a small cash reserve. Mr. Pels is willing to post additional security for Pelsco as a personal guarantor,
64. If the panel continues to have outstanding concerns with respect to this Application, Pelsco submits that those can be addressed by imposing conditions on the license.
65. Outright refusal of a license is the harshest outcome in this application. It prohibits Mr. Pels from participating in the automotive industry and pursuing his chosen profession.
66. Mr. Pels acknowledges AMVIC's role as a regulatory body and intends to comply fully with the licensing requirements and any terms or conditions imposed. His willingness to do so is demonstrated by the seriousness with which he is treating these proceedings.
67. AMVIC's role as a gatekeeper is acknowledged, but at some point in time that gate ought to open for applicants in Mr. Pels' position.

68. Pelsco submits that it is in the public interest to grant its application for an Automotive Business License. Pelsco is in a position to make a positive contribution to Alberta's automotive industry.

ANALYSIS AND CONCLUSIONS

69. This Appeal Board accepts the Agreed Statement of Facts and also finds as follows:
- a. Mr. Pels has a poor record of compliance with the salesperson licensing requirements of AMVIC.
 - b. Without excuse or justification, Mr. Pels failed to attend an August 19, 2013 administrative review hearing scheduled by AMVIC.
 - c. There is no evidence before this Appeal Board of any violations by Mr. Pels of the Fair Trading Act since 2003 other than those referenced in the Agreed Statement of Facts.
 - d. Mr. Pels promptly paid fines and restitution arising from the 2013 Fair Trading Act convictions for engaging in the automotive business without an automotive sales license.
 - e. At the time of its application for an automotive business license, Pelsco was a validly incorporated business in Alberta.
 - f. Mr. Pels is the directing mind of and has a controlling interest in Pelsco.
 - g. Mr. Pels was transparent on the Automotive Business Profile Form, the AMVIC application for an automotive business license for Pelsco. He disclosed various cancellations of his salesperson license and his convictions under the Fair Trading Act.
 - h. Pelsco has little to no cash on hand, but, if Mr. Pels' evidence is to be believed, has access to capital and/or credit through Mr. Pels.
 - i. There is no character evidence by any of Mr. Pels' past employers or others re. his reputation or reliability.
 - j. Mr. Pels history with AMVIC is largely as an automotive salesperson. The current application and appeal relates to a wholesale automotive business. Pelsco will not be dealing directly with individual consumers.
 - k. Mr. Pels did misconduct himself in respect to transactions with TW and TJ referenced above. In respect of those transactions, Mr. Pels plead guilty to offences under the Fair Trading Act in 2013, paid fines and restitution.
 - l. There is no rule or guidance in the legislation or through AMVIC as to how long an applicant must wait before reapplying for a sales or business license following violations of the Fair Trading Act or the Automotive Business Regulation.
 - m. Mr. Pels has been out of the automotive sales business in Alberta for almost four years.

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

70. An Automotive Business License (wholesaler) should be issued to Pelsco with the following conditions:
- a. Neither Pelsco nor Mr. Pels shall retail vehicles nor deal with individual consumers.
 - b. Pelsco and Mr. Pels shall provide full and unfettered access to the books, records and business premises of Pelsco to representatives of AMVIC, including scheduled and unscheduled inspections.
 - c. Prior to an Automotive Business License (wholesaler) being issued to Pelsco, Pelsco shall execute AMVIC's standard "Irrevocable Letter of Credit – Wholesale" in the sum

of \$100,000, such "Irrevocable Letter of Credit – Wholesale" being valid for no less than two years, or such other period as AMVIC, in its discretion, acting reasonably, shall require.

- d. Any single instance of non-compliance with the Fair Trading Act, the Automotive Business Regulation or these conditions shall result in the cancellation of Pelsco's Automotive Business License.
- e. The above conditions shall remain in place for two years following which, if no infractions by Pelsco or Mr. Pels, Pelsco's license status shall revert to AMVIC's typical terms and conditions for automotive business license (wholesale) holders.

DECISION

71. For the above reasons, the May 19, 2016 decision of AMVIC not to issue an Automotive Business License Pelso is quashed. AMVIC is directed to issue an Automotive Business License (wholesaler) to Pelsco with conditions as noted in paragraph 70, above. No order is made as to costs.

ISSUED and DATED at the City of Edmonton in the Province of Alberta this 29th day of April, 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