

Re: In the Matter of an Appeal by Skyco Auto Credit Inc. ("Skyco") and Tymoore Salame from the Decision of the Director of Fair Trading (as delegated to the Alberta Motor Vehicle Industry Council, "AMVIC") to cancel the automotive business license of Skyco and to cancel the salesperson registration license of Tymoore Salame

January 27, 2018

Appeal Board: Paul Alpern, Caren Mueller, Nick Tywoniuk

Representing the Appellant, Skyco: Tymoore Salame (owner)

Representing the Respondent, Alberta Motor Vehicle Industry Council ("AMVIC") and the Director of Fair Trading: Paula Hale (Shores Jardine LLP) with James Arendt (Student – Shores Jardine LLP)

Appeal Heard: 17 December 2018

Location: Service Alberta Boardroom, Commerce Place, 10155 - 102 Street, Edmonton, Alberta

An Appeal Board constituted pursuant to section 179 of the *Consumer Protection Act*, R.S.A. 2000, C-26.3 and the *Appeal Board Regulation* thereunder (Alberta Regulation 195/199 met to hear an Appeal by Skyco from the 11 July 2018 Decision of the Director of Fair Trading (as delegated to AMVIC) to: (i) cancel the business license of Skyco; and (ii) to cancel the salesperson registration of Tymoore Salame.

THE ISSUES

1. Did Skyco and/or Tymoore Salame breach provisions of the Consumer Protection Act, the Automotive Business Regulation, the Vehicle Inspection Regulation and/or the Cost of Credit Disclosure Regulation?
2. In the circumstances, is it appropriate for this Appeal Board to vary or quash the decision that is being appealed?

RELEVANT LEGISLATION

CONSUMER PROTECTION ACT

Unfair Practices

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- (4)** *Without limiting subsections (2) and (3), the following are unfair practices if they are directed at one or more consumers or potential consumers:*
- (a)** *a supplier's doing or saying anything that might reasonably deceive or mislead a consumer;*

Licence require – designated businesses

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- (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.*

Refusal, suspension, cancellation, terms

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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,
 - (i.1) fails to repay a fund created under [section 137](#) in respect of amounts paid out in claims against the licensee,
 - (i.2) fails to pay a levy of assessment under [section 136\(8\)](#) or a levy of assessment for a fund created under [section 137](#),
 - (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,
 - (vii) is convicted of an offence referred to in [section 125](#) or is serving a sentence imposed under a conviction, or
 - (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.

Vicarious Liability

- 166** *For the the purposes of this Act, an act or omission by an employee or agent of a person is deemed also to be an act or omission of the person if the act or omission occurred*
- (a) *in the course of the employee's employment with the person, or*
 - (b) *in the course of the agent's exercising the powers or performing the duties on behalf of the person under their agency relationship.*

Appeal

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(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) *to whom an order under section 129 or 157 is directed, or*
 - (e) *to whom a notice of administrative penalty is given under section 158.1(1)*
- 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.*

Effect of Appeal

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- (1) *Subject to subsection (2), an appeal under section 179 does not affect the status or enforceability of the decision or order being appealed.*
- (2) *A person who is appealing a decision or order under section 179(1)(b), (c) or (d) may apply to the chair of the appeal board to stay the decision or order being appealed until the appeal board renders its decision on the appeal.*
- (3) *On application under subsection (2) and after allowing the Director to make representations, the chair may, if the chair considers it appropriate, order a stay of the decision or order being appealed until the appeal board renders its decision on the appeal.*

AUTOMOTIVE BUSINESS REGULATION

General codes of conduct

- 12 *Every business operator must comply with section 6 of the Act and in addition must*
- (o) *comply with any legislation that may apply to the selling, leasing, consigning, repairing, installing, recycling or dismantling of vehicles.*

Adoption of provisions

- 18 *Sections 125, 127 and 128 of the Act apply, with the necessary changes, to the registration of salespersons.*

BACKGROUND AND EVIDENCE

1. At the relevant time, Skyco held an automotive business license and operated an automotive sales business in Alberta;
2. Tymoore Salame is the controlling mind of Skyco and operated as a registered salesperson on behalf of Skyco in Alberta;
3. After receiving a series of complaints against Skyco in early 2018, AMVIC suspended Skyco's automotive business license and Mr. Salame's salesperson registration;
4. Following an investigation, by letter dated July 11, 2018, AMVIC cancelled Skyco's automotive business license and Mr. Salame's salesperson registration;
5. Mr. Salame appeals the cancellations.

AMVIC'S EVIDENCE

Ms. Hale, on behalf of AMVIC called one witness: Meghan Doupe. Ms. Doupe's evidence included:

6. Ms. Doupe is an investigator with AMVIC;
7. She was assigned several files to investigate;
8. She received the Skyco file in late January or early February of 2018;
9. When the initial complaints were reviewed, an assessment was made that given the gravity of the complaints, AMVIC didn't want any more consumers to be adversely impacted while the investigation was underway. Accordingly, a decision was made to suspend Skyco's license pending further investigation;
10. That suspension was communicated to Skyco by letter dated February 26, 2018;

11. Ms. Doupe delivered the suspension letter to Mr. Salame;
12. Mr. Salame was aware of the complaints against him;
13. Upon receipt of the suspension letter, Mr. Salame advised that he was not currently conducting business and wanted time to make things right by paying off the liens;
14. Eight consumer complaints were investigated by AMVIC;
15. Several of the complaints related to unpaid liens resulting in consumers paying not only for their new/used vehicle purchased from Skyco, but also continuing to pay for the vehicle they traded in to Skyco:
 - a. On July 14, 2017, complainant TN traded in his 2014 Nissan Versa for a 2011 Mazda Tribute at Skyco. By trading in his vehicle, he was led to believe that the outstanding lien of approximately \$11,500 on the Nissan would be paid out in full by Skyco. Weeks later, TN was informed that the lien on the Nissan was not paid out. Therefore, TN owes on both the Nissan and the Mazda even though he does not have possession of the Nissan.
 - b. On August 11, 2017, RC traded in her 2011 Chevrolet Cruz for a 2015 Dodge Journey at Skyco. After purchase, RC was informed that the vehicle she purchased was not in the Skyco's possession yet so Skyco gave her a comparable loaner vehicle until the vehicle she purchased was available. RC drove the loaner vehicle for approximately eight months until April 2018, but it was repossessed by the bank because it had an unpaid lien against it. RC has been left with no vehicle in her possession, but has been required to continue to make payments on a vehicle she does not own. Skyco never did have possession of nor the right to sell the 2015 Dodge Journey that RC thought she had purchased;
 - c. On September 2, 2017, CP traded in her 2014 Dodge Caravan for a 2017 Mitsubishi Outlander at Skyco. She was led to believe that the outstanding lien of approximately \$35,000 on her Dodge Caravan would be paid off by Skyco. Weeks later, CP was informed that the lien on the Dodge was not paid out. CP was left owing loan payments on both the Dodge and the Mitsubishi;
 - d. On September 18, 2017, TM traded in a 2014 Dodge Journey for a 2016 Chrysler 300 at Skyco. TM was led to believe that the outstanding lien of approximately \$32,500 on his Dodge Journey would be paid off by Skyco. Weeks later, TM was informed that the lien on the Dodge was not paid out. TM was left owing loan payments on both the Dodge and the Chrysler. This is the same Dodge Journey that Skyco loaned to RC. On default of loan payments on the Dodge Journey by TM (which vehicle TM no longer had possession of), the bank repossessed the vehicle (then in the possession of RC) in April 2018;
 - e. On October 12, 2017, NB traded in her 2014 Nissan Sentra for a 2017 GMC Terrain at Skyco. NB was led to believe that the outstanding lien of approximately \$13,000 on her Nissan would be paid off by Skyco. Weeks later, NB was informed that the lien on the Nissan was not paid out. NB was left owing payments on both the Nissan and the GMC;
 - f. On October 16, MMC traded in his 2014 Chrysler 200 for a 2013 Nissan Titan at Skyco. MMC was led to believe that the outstanding lien of approximately \$16,000 on the Chrysler would be paid off by Skyco. Weeks later, NB was informed that the lien on the Chrysler was not paid out. NB was left owing payments on both the Chrysler and the Nissan;
 - g. On November 28, 2017, EG traded in his 2010 Chevrolet Impala for a 2015 Ford Escape at Skyco. EG was led to believe that the outstanding lien of approximately \$11,800 on the Chevrolet would be paid off by Skyco. Weeks later, EG was informed that the lien on the Chevrolet was not paid out. NB was left owing payments on both the Chevrolet and the Ford;
 - h. On December 13, 2017, MG traded in his 2015 Dodge Journey for a 2017 Mitsubishi Outlander at Skyco. MG was led to believe that the outstanding lien of approximately \$38,500 on the Dodge would be paid off by Skyco. Weeks later, MG was informed that the lien on the Dodge was not paid out. MG was left owing payments on both the Dodge and the Mitsubishi;

16. Mr. Salame appeared remorseful and sincere, but there's no doubt that Mr. Salame knew that he was selling vehicles to consumers knowing that they had outstanding liens on them;
17. Mr. Salame told her he was having money troubles, acknowledged his actions and wanted time to pay off the liens and make things right;
18. None of the liens have been paid off to date;
19. None of the consumers have been compensated to date;
20. Four of the consumers have made claims to AMVIC's compensation fund. These claims will be individually assessed by the fund coordinator. Skyco will have an opportunity to respond to these claims;
21. Several of the consumers have had their credit negatively impacted and/or have been making extra payments for vehicles they no longer own;
22. The known combined amount that Skyco owes in unpaid liens is approximately \$150,000;
23. Some financial institutions have repossessed the traded-in vehicles, but Skyco has not been held accountable;
24. Mr. Salame was served with a notice of an administrative review by AMVIC to be held on June 20, 2018. Mr. Salame failed to attend the meeting.

There was no cross examination by Mr. Salame, other than to state that he had not received any notices of consumer compensation fund claims.

TYMOORE SALAME'S EVIDENCE

Mr. Salame's evidence included:

25. Ms. Doupe is right – cancellation of Skyco's license is deserved;
26. He intended to pay off the liens, but could not;
27. The problems started when he went on holidays;
28. He was overseas between July 10 and August 29, 2017;
29. An employee of Skyco screwed up;
30. Upon his return, Mr. Salama tried to sell his way out of trouble, but could not;
31. The more he sold, the more damage he was doing;
32. He says he was never personally served with notice of AMVIC's June 20, 2018 administrative review and didn't know the meeting was occurring;
33. He is not appealing the cancellation of Skyco's business license;
34. He is appealing the cancellation of his individual salesperson registration;
35. Selling vehicles is what he knows best. He has been doing it for 10 years. He has never had a complaint against himself personally;
36. He'd like to continue selling vehicles, make some money and make things right with the consumers affected;
37. He says he has land overseas and is trying to sell it so that he can use the sale proceeds to pay off the liens and offer compensation;
38. He asks the appeal board to undo the cancellation of his personal salesperson registration.

On questioning by Ms. Hale, Mr. Salame reaffirmed that he had not received notice of AMVIC's June 20, 2018 administrative review meeting. Ms. Hale provided the appeal board with an Affidavit of Service by AMVIC investigator Maurice Brodeur. Mr. Brodeur attested that on June 14, 2018 he personally served Tymoore Salame with a letter from AMVIC dated June 12, 2018 setting the date, time and place (June 20, 2018, 10:30 am at #303, 9945 50 Street, Edmonton) for an administrative review together with the disclosure referenced in that letter.

AMVIC'S ARGUMENTS

In summarizing AMVIC's position, Ms. Hale stated:

39. AMVIC's evidence is uncontested;

40. Mr. Salame has not disputed the fact that he, on behalf of Skyco, took vehicles in on trade, undertook to promptly pay off the liens on those vehicles but failed to do so;
41. Mr. Salame implied that these transactions went sideways while he was away overseas;
42. By his own evidence, he was away for six weeks;
43. The troublesome transactions span a period of approximately six months from July 14 to December 13, 2017;
44. Mr. Salame said that he tried to sell his way out of trouble but made things worse;
45. That doesn't explain why, when faced with a difficult situation, the decision Mr. Salame made was to continue to defraud consumers;
46. The vehicles he sold had liens on them;
47. Even the loaner vehicle Mr. Salame provided to RC had a lien on it and was repossessed;
48. She cautions this appeal board not to re-empower someone in the motor vehicle industry who engages in this type of behavior;
49. The choices Mr. Salame made were intentional, none were accidental;
50. Consumers and financial institutions suffered significant financial losses;
51. Credit records of consumers were seriously and negatively impacted and will be for a long period of time;
52. Mr. Salame should not be permitted to re-enter the automotive sales industry, as a sales representative or otherwise;
53. If sales is Mr. Salame's passion and skill, he can enter into sales in a non-regulated industry if he chooses to;
54. Mr. Salame has shown a pattern of misconduct in the motor vehicle sales industry;
55. AMVIC, as the regulator of a self-regulated industry, relies on the integrity of its members;
56. She urges the appeal board not to reinstate Mr. Salame as a registered salesperson.

TYMORE SALAME' ARGUMENTS

In summarizing his position, Mr. Salame stated:

57. If he was permitted to re-enter the industry as a salesperson, he would be working under the supervision of other dealerships who are responsible to AMVIC;
58. He would not be "free-dealing" on his own;
59. Some of the most successful people in the world have failed multiple times;
60. He should not be held indefinitely liable;
61. Only around four percent of the vehicles sold by Skyco were problematic;
62. He has paid a significant personal price too;
63. He had personal vehicles repossessed and is almost losing his home.

ANALYSIS AND CONCLUSIONS

64. Mr. Salame, operating through Skyco, had a scheme over a period of at least six months in 2017 of taking vehicles with outstanding liens in on trade, but failing to pay off the liens on those traded-in vehicles, leaving unsuspecting consumers with loans owing on both the vehicle they purchased from Skyco and the vehicle they traded-in;
65. Consumers were either obligated to continue to make payments on the traded in vehicles, or default on those payments, seriously negatively affecting their credit ratings;
66. While acknowledging the facts and the misconduct, Mr. Salame blames an employee of Skyco who, we are led to believe, was entering into vehicle sales transactions while Mr. Salame was out of the country for six weeks in July and August 2017;
67. Pursuant to s. 166 of the Consumer Protection Act, Mr. Salame is vicariously liable for the acts or omissions of his employees while they are acting in the course of their employment with Skyco;
68. If this appeal board concluded that the challenges Skyco and Mr. Salame faced in the fall of 2017 were a direct result of the acts or omissions of an employee over a period of some six weeks, that doesn't explain why Mr. Salame continued for several months the same

misconduct he blames an employee for, specifically – failing to pay out liens on vehicles either taken in on trade or sold to consumers;

69. Mr. Salame states that he intends to "make things right" by compensating the impacted consumers, but as at the date of the hearing into these matters, no efforts have been made to do so;
70. Having considered the evidence and submissions of the parties, and with respect to those provisions of the Consumer Protection Act and associated regulations that AMVIC alleges were breached by Skyco, this appeal board concludes that it would not be in the public interest to reinstate either the business license of Skyco or the salesperson registration of Tymoore Salame.

DECISION

For the above reasons and considering the failure of Tymoore Salame to make any demonstrable effort to remedy the hardships that his actions have brought on several consumers, the July 11, 2018 decision of the Director of Fair Trading (as delegated) to cancel the business license of Skyco Auto Credit Inc. and to cancel the salesperson registration of Tymoore Salame is confirmed. No costs are awarded to either party.

ISSUED and DATED at the City of Edmonton in the Province of Alberta this 27th day of January, 2019 by the Appeal Board constituted to hear the above referenced matter pursuant to section 179 of the Consumer Protection Act and the Appeal Board Regulation thereunder.

Paul Alpern
Caren Mueller
Nick Tywoniuk