

Re: In the Matter of an Appeal by 1292709 Alberta Ltd. o/a Cars on Whyte from the Decision of the Director of Fair Trading (as delegated) to cancel: (i) the issued Provincial Automotive Business License of 1292709 Alberta Ltd. o/a Cars on Whyte and (ii) the provincial salesperson registration of Martin Hausner.

September 9, 2016

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

Representing the Appellant, 1292709 Alberta Ltd. o/a Cars on Whyte: Soni Nayak, SN Law Office

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: 28 July 2016 at Service Alberta Offices located at Commerce Pace, 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 October 27, 2015 decision of the Director of Fair Trading (as delegated) to cancel: (i) the issued Provincial Automotive Business License of 1292709 Alberta Ltd. o/a Cars on Whyte; and (ii) the provincial salesperson registration of Martin Hausner.

THE ISSUES

1. Should this Appeal Board vary, confirm or quash the October 27, 2015 decision of the Alberta Motor Vehicle Industry Council (AMVIC) to cancel the issued Provincial Automotive Business License of 1292709 Alberta Ltd. o/a Cars on Whyte and the Provincial salesperson Registration of Martin Hausner?

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

Prior to this hearing, the Appellant applied for a stay of AMVIC's October 27, 2015 decision to cancel: (i) the issued Provincial Automotive Business License of 1292709 Alberta Ltd. o/a Cars on Whyte; and (ii) the provincial salesperson registration of Martin Hausner. On December 31, 2015, the Chair of this Appeal Board issued a written decision denying the stay application.

At the commencement of the Appeal heard on July 28, 2016, an issue arose as to whether proper service was made of various communications from AMVIC to the Appellant dated August 17, 2015, September 15, 2015 and September 16, 2015. The Appeal Board heard evidence from the Appellant that he did not receive any of those communications. The Appeal Board heard evidence from Craig Dockery, an AMVIC Investigator, that each letter referred to above was sent by Canada Post to the Appellant's address of record and Canada Post tracking numbers confirm delivery. In addition, the Appeal board heard that these same letters were emailed to the Appellant's email address on file. The issue is relevant as it could affect the Appellant's right to challenge AMVIC's cancellation of the Automotive Business License #81022490 of 1292709 Alberta Ltd. doing business as Edmonton Imports (referred to as License #1 in the Agreed Statement of Facts below).

The Appeal Board concluded that:

1. AMVIC complied with its service obligations of the August 17, 2015, September 15, 2015 and September 16, 2015 letters (the "Letters");
2. The Appellant was aware of the Administrative Penalty proceedings initiated by AMVIC in respect to Automotive Business License #81022490;
3. There are concerns about the credibility of the Appellant's evidence that he never received the Letters;
4. There was an administrative penalty in the sum of \$1,500 levied against 1292709 Alberta Ltd. doing business as Edmonton Imports;
5. Such administrative penalty was neither paid nor appealed;
6. The Appellant had proper notice of the penalty and the opportunity to appeal;
7. This Appeal Board has no jurisdiction to hear evidence respecting the reasons underlying the administrative penalty in the sum of \$1,500 levied against 1292709 Alberta Ltd. doing business as Edmonton Imports;
8. The only issue under appeal today is with respect to the cancellation of Automotive Business License of 1292709 Alberta Ltd. doing business as Cars on Whyte and the cancellation of the salesperson license of Martin Hausner personally.

AGREED STATEMENT OF FACTS

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

1. *The Appellant 1292709 Alberta Ltd. ("the Licensee") is a corporation incorporated under the Business Corporations Act RSA 2000 c B-9. The Appellant Martin Hausner is the sole shareholder and director of the Licensee.*
2. *From March 31, 2007 until October 1, 2015 the Licensee held AMVIC license #81022490 ("License #1"). License #1 was issued in the name of the Licensee doing business as Edmonton Imports and related to premises located at 7109 - 104 Street in Edmonton, Alberta.*
3. *During the time that License #1 was in effect, there were a number of issues raised with the Licensee by AMVIC as follows:*
 - a. *In April of 2011 the Licensee was 21 days late in renewing its license and with respect to levies payable to AMVIC;*
 - b. *In 2012 the Licensee was 4 months and 11 days late in remitting levies payable to AMVIC. The reason given by the Licensee was that the police had seized vehicles and paperwork. License #1 was inactivated for non-payment of levies, and then reactivated in August;*
 - c. *In 2013 the Licensee was required to remit levies for the period from March of 2011 to February of 2012 prior to License #1 being renewed;*
 - d. *In March of 2013 conditions were placed on License #1 requiring the Licensee to keep AMVIC up to date on outstanding Fair Trading Act RSA 2000 c. F-2 ("FTA") and Traffic Safety Act RSA 2000 c. T-6 ("TSA") charges;*
 - e. *In 2014 the Licensee paid its renewal fee on time, but did not remit levies payable to AMVIC;*
 - f. *On March, 20 2014 the Director of Fair Trading (as delegated) issued a Director's Order relating to advertising violations;*

- g. *On June 3, 2014 the Licensee attended an Administrative Review and was advised that license renewals were to be done by February 14 of each year and that sales levies were to be accurately recorded and submitted in advance of February 14 of each year;*
 - h. *By letter dated June 24, 2014 the Director of Fair Trading (as delegated) issued an Administrative Penalty of \$750 for breach of the March 20, 2014 Director's Order. The Administrative Penalty was paid by the Licensee;*
 - i. *On January 20, 2015 the Licensee attended an Administrative Review and license renewal of License #1 was made subject to a satisfactory inspection. The resulting inspection indicated that as of February of 2015, levies were owing for the period from March 31, 2014 to December 31, 2014;*
 - j. *On July 2 2015 the Director of Fair Trading (as delegated) issued an Administrative Penalty for \$1,500 to the Licensee. The Director found that the Licensee had contravened s.132 of the FTA, section 9 of the Automotive Business Regulation and section 15.1 of the Vehicle Inspection Regulation. The Administrative Penalty was not appealed and was not paid;*
 - k. *Prior to June of 2015, AMVIC had opened between 12-15 investigation files in relation to the Licensee related to License #1. Most of the investigation files were closed by AMVIC;*
 - l. *On September 16, 2015 the Director issued a decision cancelling License #1. The September 16, 2015 decision was not appealed. The Appellant claims that the Licensee did not receive the September 16, 2015 letter.*
 - m. *No levies have been submitted to AMVIC in relation to License #1 since its cancellation.*
4. *On July 20, 2015 the Licensee was issued conditional license #82005847 by AMVIC ("License #2). License #2 was issued in the name of 1292709 Alberta Ltd. doing business as Cars on Whyte and related to premises located at 10208 - 82 Ave in Edmonton, Alberta;*
 5. *By letter dated September 15, 2015 the Director of Fair Trading (as delegated) advised the Licensee of an Administrative Review scheduled for September 29, 2015 in relation to License #2. The Appellant claims that the Licensee did not receive the September 15, 2015 letter;*
 6. *The Licensee did not respond to the letter of September 15, 2005 nor attend at the Administrative Review on September 29, 2015. The Licensee had attended all of the previous Administrative Reviews;*
 7. *By letter dated October 27, 2015 the Director of Fair Trading (as delegated) cancelled License #2 and cancelled the salesperson registration of Martin Hausner as Mr. Hausner was no longer associated with an actively licensed business as required by s.16(8) of the Automotive Business Regulation.*
 8. *By letter dated October 29, 2015 the Licensee appealed the cancellation of License #2 and the cancellation of his salesperson registration.*
 9. *By email dated December 2, 2015 the Licensee requested a stay of the cancellation of License #2 pending the hearing of the within Appeal.*

10. *On December 31, 2015 the Licensee's request for a stay of the cancellation of License #2 was denied.*
11. *No levies have been submitted to AMVIC with respect to License #2 for the period from July 20, 2015 to October 29, 2015.*
12. *On July 4, 2016 an application was filed in the Court of Queen's Bench of Alberta seeking an Order pursuant to section 156 of the Fair Trading Act RSA 2000 c.F-2. The application was adjourned until after the hearing of this Appeal at the request of the Licensee.*

EVIDENCE

The Appeal Board heard from five witnesses: Joseph VanDerVelden, Darcy Bingham and Martin Hausner on behalf of the Appellant and Stephanie Page and Craig Dockery on behalf of the Respondent.

Evidence of Joseph VanDerVelden -

1. Works for Coast to Coast Dealer Services for the past seven years;
2. Current title is Business Development Manager;
3. Has been in the auto warranty industry for 11 years;
4. Sells extended auto warranties in Alberta;
5. Has had dealings with AMVIC in the past. AMVIC sometimes has questions about warranties issued and repair work done;
6. Has known Martin Hausner for seven years;
7. Martin Hausner markets Coast to Coast's warranties;
8. He has had no issues or concerns with Martin Hausner's business practices;
9. Says he has known Martin Hausner to step up and make things right even if an issue with a vehicle he's sold is not covered by warranty;
10. Says Martin Hausner pays remittances to Coast to Coast when due;
11. On cross-examination, confirms that he has no knowledge of Martin Hausner's dealings with AMVIC;
12. His dealings with Martin Hausner were always through Edmonton Imports then through Shine Autos;
13. Was not aware that that the Automotive Business Licenses of Edmonton Imports and Cars on Whyte were cancelled in October 2015;
14. He has seen no paperwork transitioning the Edmonton Imports business to Shine Autos.

Evidence of Darcy Bingham –

1. Has been an auto mechanic since 1979;
2. Journeyman auto certification in 1987 and heavy duty certification in 1991;
3. Has known Martin Hausner since 2007;
4. Does Martin Hausner's car assessments;
5. Has never had issues with AMVIC re. Martin Hausner's operations;
6. On cross-examination, states that there have been fewer than 10 complaints about his work in the last seven years;
7. Denies signing blank mechanical fitness assessments (MFAs) in advance and allowing dealers to complete them;

8. Says he uses a three-page form, so there's no opportunity to photocopy/change his assessments;
9. In his dealings with Martin Hausner, he has dealt exclusively with Edmonton Imports;
10. He is not aware of Martin Hausner's numbered company nor that that company's Automotive Business License was cancelled in October 2015;
11. Can't confirm whether or not he has done any MFA's for Martin Hausner since October 2015;
12. On re-direct questioning from Ms. Nayak, Mr. Bingham acknowledged that he did an MFA for a Smart car for Edmonton Imports;
13. Mr. Bingham states that there were no issues with that car and that it complied in every way;
14. He did get calls from AMVIC re. concerns over MFAs he had completed, but no wrongdoing was ever proven.

Evidence of Martin Hausner –

1. Is the only shareholder and director of 1292709 Alberta Ltd.;
2. Confirms that a conditional license was issued to Cars on Whyte in about July 2015 and that he never breached any conditions;
3. Was a registered salesperson with AMVIC until October 27, 2015;
4. He now has a business in Saskatchewan;
5. Edmonton Imports and Cars on Whyte trade names are now both licensed to Shine Autos;
6. There's a lot of goodwill associated with those trade names;
7. Shine Autos has a valid license at 7109 – 104 Street in Edmonton, Alberta;
8. With respect to the \$1,500 administrative penalty issued to his company, Martin Hausner says the transaction was completed by his finance manager (a former sales representative at multiple Toyota and GM Dealerships);
9. The transaction was completed by FAX. The customer was in Calgary;
10. Has had other dealings with AMVIC, including a \$750 penalty paid for improper advertising and a penalty for failure to submit warranty documents;
11. States that he was advised by AMVIC to stop using Darcy Bingham for MFAs;
12. Says Mr. Bingham does most of the independent dealer's MFA's in Edmonton, so it's not unusual that there would be a few complaints;
13. Martin Hausner states that he took Alberta's Fair Trading Act course twice;
14. If licenses were granted back to him, he would comply fully;
15. He does the best he can to comply;
16. He sells good quality vehicles and stands by what he sells;
17. On cross-examination by Ms. Stevenson, Martin Hausner stated that he had licensed the trade names "Edmonton Imports" and "Cars on Whyte" to Shine Autos (the "Trade Name License Agreement"), that neither Edmonton Imports nor Cars on Whyte were operating after October 27, 2015 and that all sales through the company names Edmonton Imports and Cars on Whyte after October 27, 2015 were done through Shine Autos pursuant to a license agreement;
18. Ms. Stevenson challenged the validity of any Trade Name License Agreement, suggesting that any such agreement was a fabrication intending to hide the fact that Martin Hausner was still conducting business under Edmonton Imports and Cars on Whyte after October 27, 2015 (when his Automotive Business License was cancelled). Martin Hausner rejected that suggestion.
19. Ms. Stevenson further suggested that Martin Hausner back-dated the Trade Name License Agreement to October 27, 2015. Martin Hausner stated that's not true.

20. In support of her position, Martin Hausner stated that AMVIC's October 27, 2015 decision cancelling License #2 was not served on Martin Hausner until October 29, 2015. Accordingly, prior to his receipt of that decision, Martin Hausner had no reason to believe he couldn't continue to use the Cars on Whyte name and had no reason to license that name to Shine Autos. In response to that, Martin Hausner stated that he had been in talks with Shine Autos for some time and that the timing was coincidental;
21. Martin Hausner stated that he complied with all license conditions applied to Cars on Whyte;
22. Martin Hausner further stated that he never actually sold a car through Cars on Whyte, that he was renovating the property then his license was cancelled;
23. Martin Hausner stated that no Cars on Whyte levies were ever issued because no cars had been sold Cars on Whyte;
24. Martin Hausner stated that after October 27, 2015, Cars on Whyte had no employees or contractors, that all personnel were contracted to Shine Autos;
25. Ms. Stevenson referred to a meeting between Martin Hausner and AMVIC investigator Craig Dockery in June 2016, during which Mr. Dockery requested from Martin Hausner a copy of the Trade Name License Agreement. In response to Ms. Stevenson's question about why Martin Hausner didn't produce the Trade Name License Agreement and told to Mr. Dockery "If you want it, you can subpoena it", Martin Hausner stated that it was a private agreement between Cars on Whyte and Shine Autos;
26. Ms. Stevenson referred to an AMVIC "Application Report – Investigations" dated December 9, 2014 in relation to a consumer complaint relating to Edmonton Imports. Despite repeated requests by AMVIC of Martin Hausner by email and phone for a response to the complaint, Martin Hausner refused to provide any substantive response. The document included the following chronology:
 - a. November 4, 2014: email sent to m.hausner@edmontonimports.com requesting a Supplier Response and documents. Deadline November 18, 2014.
 - b. November 18, 2014: Supplier response not received.
 - c. November 19, 2014: Team Lead Consumer Services contacted Mr. Hausner by phone and was advised by him "I do not have to respond to AMVIC, I am too busy for this nonsense, talk to my lawyer, I don't reply to emails and my staff or I delete AMVIC emails". Mr. Hausner disconnected the call.
 - d. November 21, 2014: Senior Manager of Investigations contacted Mr. Hausner by phone and was advised "I do not have to respond to AMVIC, I am too busy to respond, talk to my lawyer, I don't reply to emails, AMVIC is a bully". Mr. Hausner was advised a Supplier Response Request would be resent November 21, 2014 and was returnable November 26, 2014.
 - e. November 26, 2014: Supplier Response not received.
 Martin Hausner denies making the statements attributed to him in the chronology.
27. Martin Hausner stated that he receives a License fee from Shine Autos for the use of the names "Edmonton Imports" and "Cars on Whyte" for each vehicle sold under those names.
28. Martin Hausner stated that all of this relates to a \$1,500 penalty that he would have paid had he known about it and his licenses would have remained in place.

Evidence of Craig Dockery –

1. He is an investigator with AMVIC;
2. Has been so employed for four years;
3. He is a licensed auto technician;

4. Cars on Whyte appears to still be operating notwithstanding that its license was cancelled in October, 2015 and it has no salespeople registered to it;
5. In June, 2016, Mr. Dockery had a meeting with Martin Hausner. Martin Hausner told Mr. Dockery that Martin Hausner had licensed the use of the names Edmonton Imports and Cars on Whyte to Shine Autos. Mr. Dockery stated that he asked Martin Hausner for a copy of the Trade Name License Agreement, but Martin Hausner didn't provide it;
6. Shine Autos never applied to AMVIC to use the names Edmonton Imports or Cars on Whyte;
7. He conducted a search of Alberta's Corporate Registration System and found that Shine Autos had registered the name "Cars on Whyte 1" on May 30, 2016;
8. He spoke with Darcy Bingham on numerous occasions. MFA's completed by Mr. Bingham don't appear to represent the actual condition of the cars assessed;
9. There have been no charges against Mr. Bingham but there have been numerous files with mediated resolutions;
10. AMVIC suspects that Mr. Bingham sells signed MFA forms to dealers for the dealer to complete, without Mr. Bingham conducting any or any thorough assessment of the cars. Again, nothing has been proven to this effect.

Evidence of Stephanie Page –

1. She is the Manager of Licensing and Consumer Services for AMVIC;
2. She deals with complaints, licenses, salespeople and repair shops;
3. She is aware of 1292709 Alberta Ltd. and that it held a sales and salesperson license;
4. Automotive Business Licenses are issued to a legal entity. That legal entity can operate under a trade name;
5. Any trade name has to be connected with the legal entity using that trade name; that is, the legal name is registered with AMVIC and the associated trade name has to be registered too;
6. 1292709 Alberta Ltd. was licensed with AMVIC doing business as Cars on Whyte;
7. It's important that trade names associated with licensed legal entities are registered so that consumers can identify where to have recourse to if there is a problem;
8. 1292709 Alberta Ltd. had two trade names and two licenses associated with it: Edmonton Imports and Cars on Whyte at two different locations. Licenses are location specific;
9. Ms. Page stated that a consumer couldn't go to the Edmonton Imports location to buy a car from Cars on Whyte;
10. Corporate searches show that Shine Autos registered a trade name for "Cars on Whyte 1" May 30, 2016, but such trade name has never been registered/licensed through AMVIC for use by Shine Autos;
11. There's \$6.25 levy payable by licensees to AMVIC on any every vehicle sold. This levy funds AMVIC operations and a compensation fund;
12. Prior to 2014, levies were payable annually. Since 2014, levies are payable quarterly;
13. 1292709 Alberta was regularly late on remitting its levies to AMVIC;
14. All AMVIC license holders have a duty to cooperate with AMVIC;
15. In his dealings with AMVIC, Martin Hausner was often uncooperative and confrontational;
16. Martin Hausner stated on multiple occasions that he "doesn't have time to waste with us" and that he deletes AMVIC emails;
17. Martin Hausner only remits his levies when faced with a non-renewal of his AMVIC license;
18. Martin Hausner needed an AMVIC license to gain access to dealer auctions;

19. Since July 1, 2010, Martin Hausner only paid his levies on time once;
20. Ms. Page stated in a License Application Report dated June 8, 2015 she had advised against issuing License #2 to 1292709 Alberta Ltd. operating as Cars on Whyte given the Appellant's previous unsatisfactory dealings with AMVIC. In the Report, Ms. Page wrote: "Applicant has a history of non-compliance with AMVIC (B1022490). Currently facing an administrative penalty on existing business. Applicant wishing to open a new business under B2005847. He is consistently late on paying his levies and only pays them when his license is held by the licensing department. I have concerns that a new business will only compound AMVIC's issues with this gentleman."

The materials before this Appeal Board reveal the following:

1. By letter to the Appellant dated October 27, 2015, AMVIC cancelled License #2 on the basis that:
 - a. Martin Hausner is the sole Director of the Appellant, owning and operating both "Edmonton Imports" under License #1 and "Cars on Whyte" under License #2.
 - b. Martin Hausner is also a registered salesperson with AMVIC.
 - c. An Administrative Penalty was assessed against the Appellant on July 2, 2015 in respect to License #1.
 - d. Martin Hausner did not respond to the Administrative Penalty by paying the penalty or appealing the decision.
 - e. Martin Hausner did not respond to AMVIC's August 17, 2015 letter advising that License #1 was subject to suspension or cancellation because of non-payment of the Administrative Penalty.
 - f. AMVIC continues to receive consumer complaints regarding vehicles sold to consumers by the Appellant. Over the past twelve months there have been seven individual complaints against the two businesses owned by Martin Hausner. The majority of the complaints are based on consumers who experienced immediate mechanical concerns regarding the vehicle they purchased from Martin Hausner. AMVIC determined there was a lack of proper documentation and disclosure from the Appellant regarding the mechanical condition of the vehicles being sold.
2. In its October 27, 2015 letter, AMVIC concluded that License #2 should be cancelled because:
 - a. It is in the public interest under s. 127(c) of the Fair Trading Act to remove Martin Hausner from the automotive industry in the Province of Alberta.
 - b. Martin Hausner has failed to pay the Administrative Penalty of \$1,500.00.
 - c. Martin Hausner has received a number of AMVIC enforcement actions against his business. These actions include warnings, Director's Orders, and Administrative Penalties. Notwithstanding, Martin Hausner continues to be non-compliant.
 - d. AMVIC recently received a consumer complaint regarding the mechanical condition of a vehicle purchased from 1292709 Alberta Ltd. operating as Edmonton Imports. This complaint supports the continuing trend of non-compliance from Martin Hausner regarding the legislation.
 - e. Martin Hausner uses a specific technician for preparation of mechanical fitness assessments. This technician has been identified by AMVIC as unreliable based on the high number of consumer complaints regarding the MFAs provided. The Appellant continues to use this technician knowing there are a very high number of complaints regarding MFAs completed by this individual.

3. AMVIC also cancelled Martin Hausner's provincial salesperson registration because, as result of the cancellation of License #1 and License #2, he is no longer associated with an actively licensed business pursuant to s. 16(8) of the Automotive Business Regulation.

THE APPELLANT'S ARGUMENTS

Ms. Nayak argued:

1. Her client had a history of dealings with AMVIC over several years;
2. Most of those dealings closed with no findings of fault;
3. There was a previous Administrative Penalty of \$750 on July 2, 2015 which the Appellant paid;
4. Notwithstanding the Appellant's history with AMVIC, AMVIC issued a license to 1292709 Alberta Ltd. on July 20, 2015 with conditions;
5. None of the license conditions were breached;
6. References by AMVIC to various consumer complaints against the Appellant are vague and the Appellant has had no opportunity to answer those complaints or otherwise defend itself;
7. It is unfair to cancel the Appellant's license on the basis of consumer complaints that haven't been proven nor communicated to the Appellant;
8. There should have been full disclosure of those cases to the Appellant prior to AMVIC's reliance on them in these proceedings;
9. Acknowledges that the current \$1,500 Administrative Penalty was not paid;
10. The Appellant never missed AMVIC Administrative Penalty hearings in the past;
11. License #2 has nothing to do with License #1;
12. Suspension, other conditions, a fine and/or frequent audits of License #2 were options that should have been considered instead of cancellation;

THE RESPONDENT'S ARGUMENTS

Ms. Stevenson argued:

1. The AMVIC process leading to the cancellation of License #2 was fair;
2. The Appellant was given every opportunity to deal with these matters;
3. After the Administrative Penalty in respect to Edmonton Imports was levied, but before 30 days passed, License #2 was issued to 1292709 Alberta Ltd., operating as Cars on Whyte, notwithstanding Ms. Page's recommendation to the contrary;
4. Subsequent to the issuance of License #2, the 30 day payment period in respect to the Administrative Penalty levied in respect to License #1 passed;
5. Three letters were variously served on the Appellant: August 17, 2015, September 15, 2015 and September 16, 2015. The Appellant responded to none of these letters;
6. There was an Administrative Review hearing at AMVIC's office scheduled for September 29, 2015. The Appellant neither attended nor provided any submissions;
7. The Licensees did not respond to AMVIC's communications, did not pay the Administrative Penalty when due and had a history of ignoring the regulator. Pursuant to the Director's discretion provided by sections 127(b) and (c) of the Fair Trading Act, the Director cancelled License #2;

8. The Appellant suggests that he was unaware of the letters from AMVIC and that an Administrative Penalty was due and payable. The evidence indicates that the Appellant was well aware of the AMVIC letters and penalty chose to ignore them;
9. The evidence also suggests that notwithstanding the cancellation of License #2, the Appellant chose to carry on with his business;
10. It's in the public interest to not license the Appellant for motor vehicle sales in Alberta for a number of reasons, including the following:
 - a. Late renewals of licenses;
 - b. Levies not remitted on time;
 - c. A March 2014 Director's Order relating to advertising was breached resulting in a June 2014 Administrative Penalty of \$750;
 - d. Notwithstanding cautions by AMVIC concerning the use of Darcy Bingham for MFAs, the Appellant continued to use Mr. Bingham;
 - e. Since License #1 and License #2 were cancelled, there are indications that the Appellant continues to sell vehicles through Edmonton Imports and Cars or Whyte through a questionable arrangement with Shine Autos, notwithstanding that Shine Autos isn't licensed through AMVIC to operate under the names Edmonton Imports or Cars on Whyte;
 - f. The Trade Name License Agreement appears to have been fabricated and backdated to allow the Appellant to be engaged in vehicle sales indirectly, notwithstanding the cancellation of his licenses;
 - g. 1292709 Alberta Ltd. continues to hold the trade names for Edmonton Imports and Cars on Whyte;
 - h. Shine Autos registered the trade name "Cars on Whyte 1" in May 2016 shortly after AMVIC made enquiries of Shine Autos about their operations and relationship to Edmonton Imports and Cars on Whyte;
 - i. AMVIC has numerous examples of Bills of Sale after the cancellation of License #2 in the name of Edmonton Imports and Cars on Whyte without any reference to Shine Autos;
 - j. At no time has Shine Autos attempted to register with AMVIC the names Edmonton Imports or Cars on Whyte;
 - k. The Director's decision to cancel the license of 1292709 Alberta Ltd. operating as Cars on Whyte was in the public interest;
 - l. There are serious concerns about the governability of Martin Hausner.

ANALYSIS AND CONCLUSIONS

This Appeal Board finds as fact the following:

1. On July 2, 2015, AMVIC issued an administrative penalty to the Appellant in respect to the Appellant's License #1.
2. By letter to the Appellant dated September 15, 2015, AMVIC scheduled an administrative review on September 29, 2015 in respect of License #2 because of non-payment of the Administrative Penalty issued against the Appellant in relation to License #1.
3. With the Appellant neither paying nor appealing the Administrative Penalty, by letter dated September 16, 2015, AMVIC cancelled the Appellant's License #1 effective October 1, 2015.
4. The administrative review with respect to License #2 was held on September 29, 2015. The Appellant made no submissions to AMVIC and was not present at the administrative review.

5. By letter to the Appellant dated October 27, 2015, AMVIC cancelled License #2 and, by extension, the provincial salesperson registration of Martin Hausner.
6. By letter dated October 29, 2015, the Appellant appealed the cancellation of License #2 and the cancellation of the provincial salesperson registration of Martin Hausner.

There's some uncertainty as to whether the Appellant, by its October 29, 2015 letter, also intended to appeal the cancellation of License #1. In any event, it appears that the Appellant failed to issue such an appeal within the required time period.

License #1 was appropriately cancelled by reason of the Appellant having failed to pay and having failed to appeal the Administrative Penalty.

AMVIC scheduled an administrative review of License #2 because of non-payment of the Administrative Penalty associated with License #1. AMVIC gave written notice to the Appellant of the date, time and place of the administrative review and invited the Appellant to submit in writing any relevant information regarding the matters in issue. The Appellant failed to respond. By its letter dated October 27, 2015, AMVIC cancelled the License #2 and, by extension, Martin Hausner's salesperson registration. It's that decision that is the subject of this appeal.

The Appellant:

1. challenges AMVIC's assertion that the Appellant has misconducted itself;
2. alleges that it is being bullied by AMVIC;
3. alleges that any and all MFAs it secured are performed by licensed mechanics;
4. states argues that License #2 was canceled in part because of alleged misconduct associated with License #1, which alleged misconduct already resulted in the cancellation of License #1.

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

1. By failing to respond to AMVIC's various enforcement actions, the Appellant has demonstrated a callous disregard for the regulatory role AMVIC plays;
2. The Appellant's position that he was unaware of the July 2, 2015, September 15, 2015 and September 16, 2015 communications from AMVIC lack credibility;
3. The Appellant, principally through its operations as Edmonton Imports, has been subject to several complaints over the past 12 months;
4. The Appellant's failure to make remittances to AMVIC when due, his failure to attend an Administrative Review hearing scheduled by the regulator, his failure to pay an Administrative Penalty when due, his apparent continued participation in selling cars after October 29, 2015 through Edmonton Imports and Cars on Whyte notwithstanding that he's not licensed to do so all raise material concerns about his governability;
5. This Appeal Board considered but rejected the argument that cancellation of License #2 on the basis of non-payment of an Administrative Penalty in respect to License #1 constitutes double punishment for the same misconduct. There are numerous other instances of misconduct grounding the decision below;
6. Martin Hausner is the controlling mind in respect to License #1 and License #2 and this Appeal Board shares AMVIC's concerns that there is a risk to the public if the Appellant is permitted to hold an Automotive Business License or an automotive salesperson license in Alberta.

DECISION

For the above reasons, the October 27, 2015 decision of AMVIC to cancel the issued Provincial Automotive Business License of 1292709 Alberta Ltd. o/a Cars on Whyte and the Provincial salesperson Registration of Martin Hausner is confirmed. No order is made as to costs.

ISSUED and DATED at the City of Edmonton in the Province of Alberta this 9th day of September, 2016 by the Appeal Board constituted to hear the above referenced matter pursuant to section 179 of the Fair Trading Act and the Appeal Board Regulation thereunder.

Paul Alpern (Chair)
Hilda Lupul
Nick Tywoniuk