

In The Matter of the Fair Trading Act, RSA 2000, c. F-2

And In the Matter of an Appeal from a Decision of the Director of Fair Trading  
(as delegated) on November 29, 2016 to Refuse to Issue an Automotive  
Business License pursuant to s.127 of the Fair Trading Act

Between:

1292709 Alberta Ltd  
("1292")

Appellant

-and-

Alberta Motor Vehicle Industry Council  
("AMVIC")

Respondent

**DECISION**

**Appeal Board:** John Welbourn (chair), Caren Mueller, Lyle Berge

**Hearing:** Boardroom 3A, 3<sup>rd</sup> Floor, 10155 - 102 Street, Edmonton, Alberta,  
on March 22, April 13, and June 5, 2017.

**Counsel for the Appellant:**

Arman Chak

**Counsel for the Respondent:**

Paula Hale

**Witnesses for the Appellant:**

Christine Stephanie Page  
Craig Ronald Dockery

**Witnesses for the Respondent:**

Martin Hausner  
Mohamad El-Turk

**Preliminary Matters:**

1. At the opening of the hearing, the parties confirmed that:
  - a. The hearing room was satisfactory;
  - b. The appeal hearing would be formally recorded;
  - c. The evidence of all witnesses would be given under oath or affirmation;
  - d. Non-party witnesses would be excluded from the hearing room until asked to testify.

2. At the conclusion of the hearing, the Appeal Board requested Counsel's written submissions on the evidence, applicable law and disposition. The Appeal Board subsequently requested further submissions on specific questions. The last submission was received July 21, 2017.

**Issue:**

3. 1292 appeals from the November 29, 2016 decision of the Director of Fair Trading (as delegated) (the "Director") to refuse to issue an automotive business licence to 1292 (the "Decision"). The Decision was made pursuant to s.127 of the Fair Trading Act, RSA 2000, as amended (the "Act") and further provided that AMVIC not accept an application from 1292 for licensing or registration for a minimum period of 5 years from the date of the Decision.

**Facts:**

4. 1292 was incorporated under the Alberta Business Corporations Act. Martin Hausner is the sole shareholder and director of the corporation. From March 31, 2007 to October 1, 2015, 1292 held AMVIC Automotive Business Licence # B1022490 to do business as "Edmonton Imports" at 7109 - 104 Street in Edmonton ("Licence # 1").
5. On several occasions during that time 1292 was late in renewing License # 1, and reporting and remitting sales levies payable on the retail sale of vehicles. AMVIC suspended Licence # 1 on at least 1 occasion which was reactivated on correction of the delinquency.
6. During that same period Mr. Hausner was required to attend 2 AMVIC administrative reviews to address the requirements for timely licence renewal, the accurate recording and reporting of vehicle sales and timely remittance of levies.
7. On June 24, 2014, the Director imposed a \$750.00 administrative penalty on 1292 for breach of his Order dated March 20, 2014 relating to advertising violations of the Act. 1292 paid the penalty.
8. On July 2, 2015, the Director imposed a \$1,500.00 administrative penalty on 1292 for contravention of s.132 of the Act, the Automotive Business Regulation (the "Regulation") and the Vehicle Inspection Regulation.
9. The administrative penalty was not appealed and not paid within the time

specified, 30 days following service of the notice of the penalty.

10. On September 16, 2015 the Director cancelled Licence # 1 effective October 1, 2015. 1292 did not then appeal the cancellation.
11. On July 20, 2015 the Director issued a conditional automotive business licence # B2005847 to 1292 to do business as "Cars on Whyte" at 10208 - 82 Avenue in Edmonton ("Licence # 2"). At this point the payment period for \$1,500.00 administrative penalty had not expired.
12. Following non-payment of the administrative penalty and by letter dated October 27, 2015, the Director cancelled Licence # 2. Concurrently, the Director cancelled Mr. Hausner's automotive salesperson licence. 1292 and Mr. Hausner immediately appealed both cancellations. On December 31, 2015, 1292's request for a stay of the cancellation of Licence # 2 was denied by the chair of the Appeal Board appointed to hear the appeal.
13. On August 31, 2016, The Court of Queen's Bench of Alberta granted an injunction prohibiting 1292 and Mr. Hausner from engaging in the automotive business in Alberta until properly licensed.
14. On September 9, 2016, 1292's appeal from the cancellation of Licence # 2 was denied by that Appeal Board.
15. On or about August 4, 2016, 1292 submitted a new application to AMVIC for an automotive business licence. Mr. Hausner also applied for a new salesperson licence.
16. On or about September 12, 2016, 1292 paid the \$1,500.00 administrative penalty referred to in paragraph 8 above.
17. On November 29, 2016, the Director denied 1292's new application for an automotive business licence referred to in paragraph 15 above and directed that AMVIC not accept an application from 1292 for licensing or registration for a minimum period of 5 years from that date. 1292 has appealed the denial of the application and the 5 year prohibition from reapplication.
18. On November 29, 2016, the Director also denied Mr. Hausner's application for a new salesperson licence with the same prohibition against reapplication for 5 years. Mr. Hausner appealed the denial of his application. On April 20, 2017, an Appeal Board allowed the appeal and directed that Mr. Hausner be registered as a salesperson employed by or associated with a third party automotive business licensee, Shine Autos. The Board imposed conditions on Mr. Hausner's registration and maintaining that registration.

19. Mr. Hausner has since been registered as a salesperson for Shine Autos.

**Evidence:**

20. Stephanie Page has been AMVIC's Manager of Licensing and Consumer Services. She oversees business and salesperson licensing and renewals, and the handling of consumer complaints.
21. On receiving a business licence application, AMVIC staff review the application, determine if the business has a licensed salesperson, conduct a criminal record check, google searches, registry searches, and review the applicant's history with AMVIC. If there are any issues discovered during this process, the application file is directed to her. Ms. Page reviews the file and if she has concerns with the application directs the file to the Director with her recommendation for disposition - approve or reject the application, or interview the applicant.
22. In directing 1292's August 4, 2016 application to the Director, she recommended that the application be denied. She had several reasons for the recommendation.
23. 1292 wrongly answered 3 of questions answered in the application. 1292 had answered "no" to the query if it had "an application or and Automotive Business License or an Automotive Salesperson Registration suspended, cancelled or refused." Licences # 1 and 2 had been previously cancelled. 1292 responded that it had not been known or operated a business by another name. This was incorrect based upon Licence # 2 having been issued to 1292 operating as "Cars on Whyte". 1292 also denied holding a Provincial Business Licence in Alberta or elsewhere. 1292 was a regulated motor vehicle dealer in Saskatchewan.
24. Based upon AMVIC investigations, Ms. Page was also certain that 1292 had continued in the automotive sales business since the cancellation of the 2 Licences. Her belief was based upon consumer complaints against Edmonton Imports and recent online searches that revealed vehicle sales advertising by Edmonton Imports.
25. Ms. Page considered 1292 and Mr. Hausner to be ungovernable and recommended denial of the licence application.
26. Craig Dockery has been an AMVIC investigator for 5 years. He is the deponent of an affidavit sworn June 30, 2016. This affidavit was the evidentiary basis for The Court of Queen's Bench of Alberta Order granted August 31, 2016

prohibiting 1292 and Mr. Hausner from engaging in the automotive business in Alberta until properly licensed.

27. Mr. Dockery described his internet and registry searches, review of bills of sale and mechanical fitness assessments, and interviews which led to his conclusion that 1292 operating as Edmonton Imports had been buying and selling vehicles while not properly licensed.
28. Mr. Hausner testified that he has been involved in the motor vehicle industry since 2007. He reviewed his dealings with AMVIC relating to late renewals and payment of fees, customer complaints, administrative reviews, and administrative penalties imposed. In his view, up to October, 2015 his communications with AMVIC were generally amicable.
29. Mr. Hausner acknowledged the errors in 1292's licence application which he characterized as inadvertent and since corrected. He also confirmed that 1292 is licensed in Saskatchewan to sell vehicles across Canada and has continued to carry on business in that province.
30. Mr. Hausner denied that 1292 continued to sell vehicles in Alberta after Licences #1 and # 2 were cancelled. He stated that he had only appraised 1 vehicle after the cancellations.
31. He stated that 1292 had granted a licence to Shine Autos Ltd. to use the trade name "Edmonton Imports". This was the reason that internet searches had shown vehicles advertised for sale by Edmonton Imports. Further, he had permitted Shine Autos Ltd. to use Edmonton Imports online advertising carrier to save costs.
32. Mr. Hausner denied that he had been employed by or associated with Shine Autos Ltd. after the Licence cancellations and before the April 20, 2017 decision granting his salesperson license.
33. Mohamad El-Turk is the president of Shine Autos Ltd. His evidence corroborated that of Mr. Hausner regarding licensing and use of the trade name "Edmonton Imports". He confirmed Mr. Hausner's employment began with Shine Autos Ltd. only after he obtained his salesperson license following April 20, 2017. Mr. El-Turk confirmed that the bills of sale Mr. Dockery referred to in his affidavit and evidence were for vehicles sold by Shine Autos Ltd. operating as Edmonton Imports as per the licence agreement with 1292.
34. In Mr. El-Turk's view, Mr. Hausner is very knowledgeable and well regarded in the motor vehicle industry.

**Submissions:**

35. AMVIC submits 3 reasons that 1292 should not be granted an automotive business licence. First, 1292's application is a collateral attack on the prior Appeal Board's decision. Second, Mr. Hausner has not provided any evidence of rehabilitation since the cancellation of Licences # 1 and # 2. Third, 1292 continued to sell and buy vehicles after Licences # 1 and # 2 were cancelled.
36. 1292 did not appeal the cancellation of Licence # 1 but has applied for a new automotive sales license. AMVIC contends this is a collateral attack on the licensing process, relying on Toronto (City) v. CUPE, Local 79, [2003] 3 SCR 77 as support.
37. AMVIC argues that Mr. Hausner, as the sole shareholder and director of 1292, should provide evidence of rehabilitation but has not done so. Mr. Hausner has continuously failed to comply with the obligations of a licence holder and must show willingness to adhere to requirements of the legislation and regulations.
38. In direct contravention of the Act, 1292 continued to buy and sell vehicles after cancellation of the Licences.
39. 1292 submits that the 5 year prohibition against reapplying for licensing is punitive and unreasonable on the facts before this tribunal. The current application is not a collateral attack on the licensing process. Rehabilitation is not a criteria found in the Act, the Regulation or policy. Finally, the evidence contradicts AMVIC's contention that 1292 bought and sold vehicles while unlicensed. The alleged transactions were those of Shine Autos Ltd. Mr. Hausner was not employed by or associated with Shine Autos Ltd. at any material time.

**Findings:**

40. 1292 does not dispute the facts as stated in paragraphs 4 to 19 above. Those facts reflect 1292's delinquency in reporting requirements, licence renewal applications, and payment of levies, renewal fees and an administrative penalty. Ms. Page stated that 35 to 40% of licensees are late in renewing licences and payment of fees and levies. From this perspective 1292 was not unique.
41. Mr. El-Turk's evidence was concise, unwavering and significant. He corroborated Mr. Hausner's testimony that Mr. Hausner was not employed by or associated with Shine Autos Ltd. after the Licence cancellations. Importantly, each of the

vehicle sales AMVIC alleged to be 1292 sales were in fact Shine Autos Ltd. sales. Finally, Shine Autos Ltd. had used the name Edmonton Imports based on a licence agreement with 1292.

42. There isn't any evidence from any of the purchasers of the subject vehicles that Mr. Hausner was involved in any capacity in any of those transactions.
43. The collateral attack argument put forward by AMVIC cannot succeed. The Toronto v. CUPE decision considers a labour board arbitrator who declined to accept as determinative evidence a criminal conviction that had been upheld on appeal. That is not the issue here. The question before this Appeal Board is to determine via a *de novo* trial whether the Director's administrative decision is to be upheld, varied or quashed.
44. The term "rehabilitation" is not found in the Act or the Regulation. Regulation 4(1) states:
  - 4(1) The Director may refuse to issue or renew a license to an applicant if:
    - (a) the applicant is unable to satisfy the Director that the applicant is complying with the laws, including municipal bylaws, that apply to the automotive business to be operated under the 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.
45. Subsection (c) is not relevant to this matter. The codes of conduct noted in subsection (b) are set out in sections 11 and 12 of the Regulation. None of the provisions in either code appear to have been contravened by 1292 or Mr. Hausner.
46. This Appeal Board accepts that in denying 1292's application, the Director was not satisfied that 1292 and Mr. Hausner had complied with the legal requirements of operating an automotive business.
47. In this appeal, AMVIC has not established on the balance of probabilities that 1292 was buying or selling vehicles without proper licensing. This does not ignore Justice Goss' Order of August 31, 2016 which is an interim protective

measure. The Court did not find that 1292 or Mr. Hausner were in fact buying and selling vehicles improperly. Rather, based solely on Mr. Dockery's affidavit, Justice Goss determined that there was sufficient evidence to believe that 1292 and Mr. Hausner might be in contravention of the Act. The Order is expressly temporary until proper licensing is obtained or further Order of the Court.

48. The Appeal Panel is satisfied that the Director was correct to refuse to issue 1292 an automotive business licence based upon the information before him in issuing his November 29, 2016 decision. The Panel is not satisfied that the Director was correct in his further decision to prohibit 1292 from reapplying for 5 years.
49. The purpose of the Act and Regulation is the protection of the public. This is clear from a review of the codes of conduct set out in ss. 11 and 12 of the Regulation. The Appeal Panel notes that none of AMVIC's issues with 1292 or Mr. Hausner have involved any discernable risk to the public such as odometer fraud, falsification of mechanical fitness assessments, misrepresentation of purchase price, financing costs, warranty, vehicle condition, or making misleading or unverifiable statements or claims. With one exception, none of the codes of conduct compliance obligations of a licensee to consumers has been established in this matter.
50. The exception is a Director's Order to 1292 issued March 20, 2014 regarding mass media advertising and the subsequent \$750.00 administrative penalty imposed June 24, 2014 for breach of the Order.
51. There have been few consumer complaints against 1292. Those complaints were promptly addressed and reasonable efforts made to correct any issue.
51. There isn't sufficient proof that 1292 was buying and selling vehicles while unlicensed. 1292 acknowledges poor record keeping, late payment of levies and fees, and late renewal applications. Mr. Hausner asserts that these issues were corrected well before the Licence cancellations. These contraventions are serious but administrative in nature. The public was not at risk.
52. The Appeal Panel does not agree that 1292 and Mr. Hausner are ungovernable. The Panel does agree that the contraventions warranted sanction, particularly the administrative penalty that remained unpaid for 13 months. S.127(b)(viii) of the Act allows the Director to cancel or suspend a licence where the licensee fails to pay an administrative penalty. The Director properly exercised that authority when the penalty was not paid and after Mr. Hausner failed to attend an administrative review the specific purpose of which was to consider the failure to pay.



53. Further, the Director had sufficient grounds to deny 1292's August 4, 2016 application for a new licence and prohibit any new application for a specific reasonable period. However, the 5 year prohibition is excessive. Such an extended period is too likely to destroy 1292's business and is therefore punitive in nature .
54. In reaching this decision the Appeal Panel has considered the administrative nature of the contraventions, the minimal, if any, risk to the public, general deterrence within the motor vehicle industry, and the individual deterrence to Mr. Hausner and 1292. AMVIC's submission of a 12 month prohibition against reapplication has also been considered. AMVIC's lack of a sanctions policy for licensee contraventions has been noted.
55. Consideration has also been given to the April 20, 2017 decision to grant Mr. Hausner a salesperson licence subject to the conditions.

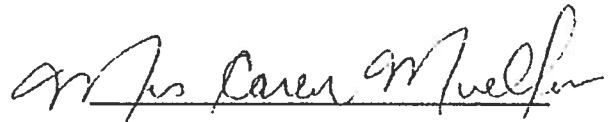
**Decision:**

55. The decision of this Appeal Board is that the November 29, 2016 decision of the Director is varied so that:
  - (a) Effective January 1, 2018, 1292 or Mr. Hausner shall be entitled to apply for an automotive business licence;
  - (b) Provided the applicant has complied with the requirements of s.126(1) and (2) of the Act, the Director shall grant the applicant an automotive business licence for a term of 1 year. Annual licence renewal will be subject to the applicant having fulfilled all requirements and obligations of an licensee under the Act and Regulation, including payment of any renewal fees ;
  - (c) At all times, the applicant must ensure that AMVIC has its current email address via which AMVIC can communicate with the applicant. The applicant must check this email address at least weekly and on receipt of any communication from AMVIC must immediately confirm to AMVIC receipt of the communication;
  - (d) The applicant must renew the licence on or before the expiry date of the licence. Failure to do so will entitle the Director to immediately suspend the licence without notice to the applicant;

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John H. Welbourn

Signed this 27 day of August, 2017.



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Caren Mueller

Signed this 27 day of August, 2017.

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Lyle Berge

- (e) The applicant will at all times fulfill the requirements and obligations of a licensee under the Act and Regulation.
- (f) Conditions (c), (d) and (e) will remain in effect until April 20, 2020.

**Conclusion:**

56. The members of the Appeal Panel confirm that they do not have any conflict with either party, Counsel or any witness.

Signed this \_\_\_\_ day of August, 2017.

\_\_\_\_\_  
John H. Welbourn

Signed this \_\_\_\_ day of August, 2017.

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Caren Mueller

Signed this 28<sup>th</sup> day of August, 2017.

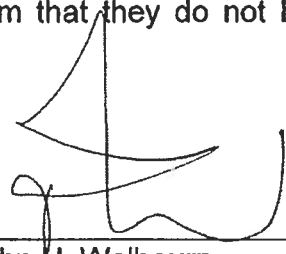
  
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Lyle Berge

- (e) The applicant will at all times fulfill the requirements and obligations of a licensee under the Act and Regulation.
- (f) Conditions (c), (d) and (e) will remain in effect until April 20, 2020.

**Conclusion:**

56. The members of the Appeal Panel confirm that they do not have any conflict either party, Counsel or any witness.

Signed this 29 day of August, 2017.



\_\_\_\_\_  
John H. Welbourn

Signed this \_\_\_\_ day of August, 2017.

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Caren Mueller

Signed this \_\_\_\_ day of August, 2017.

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Lyle Berge