

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 July 10, 2017 to Cancel an Automotive Business License
Pursuant to s.127 of the Fair Trading Act

Between:

1802580 Alberta Ltd. operating as
Calgary Truck & Automotive Sales
("1802580")

Appellant

-and-

Alberta Motor Vehicle Industry Council
("AMVIC")

Respondent

And In The Matter of an Appeal from a Decision of the Director of Fair Trading
(as Delegated) on July 10, 2017 to Cancel an Automotive Business License
Pursuant to s.127 of the Fair Trading Act

Between:

Amil Gader
("Mr. Gader")

Appellant

-and-

Alberta Motor Vehicle Industry Council
("AMVIC")

Respondent

DECISION

Appeal Board: John Welbourn (chair)
James B. Isaacs
Al Briggs (absent)

Hearing: 3rd Floor Boardroom, 7015 Macleod Trail SW, Calgary, Alberta, on
October 17, 2017.

Appearing for the Appellants:

Amil Gader

Counsel for the Respondent:

Paula D. Hale

Witness for the Appellants:

Amil Gader

Witness for the Respondent:

Heather Ewasiuk

Preliminary Matters:

1. A preliminary meeting with the parties was held by conference call on September 12, 2017 to discuss procedural matters. The parties agreed on the date, time and place of the appeal hearing, and a deadline for disclosure of AMVIC records. They also agreed that the evidence of all witnesses would be given under oath but not formally recorded. The parties understood that the appeal would be a *de novo* hearing.
2. On the hearing date, Mr. Briggs did not arrive at the hearing at the scheduled time. Mr. Welbourn contacted him and learned Mr. Briggs' health prevented him from attending. Mr. Welbourn then advised the parties of the issue and asked for their views on the situation. After considering the Fair Trading Act, the regulations, other relevant legislation and rules, and hearing the representations of both parties, Mr. Welbourn informed the parties that they had 2 options. First, if they both agreed the hearing could proceed on the strict understanding that the 2 members of the Appeal Board present might not agree on the disposition of the appeal. The Appeal Board would then be deadlocked, a second Appeal Board would have to be appointed and the appeal reheard. Alternatively, if either party was not prepared to proceed without the full Appeal Board present, the appeal would be adjourned to a date to be determined. Both parties agreed to proceed with the hearing.
3. At the start of the hearing, the parties confirmed that:
 - a. The hearing room was satisfactory;
 - b. The appeal hearing would not 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.

Issues:

4. 1802580 appeals from the July 10, 2017 decision of the Director of Fair Trading (as Delegated) to cancel its wholesale automotive business license.

5. Mr. Gader appeals from the July 10, 2017 decision of the Director of Fair Trading (as Delegated) to cancel his automotive salesperson license.

Exhibits:

6. The following documents were entered as Exhibits during the hearing:

<u>Exhibit #</u>	<u>Document</u>
1	AMVIC Application Report - Investigations - February 6, 2017
2	Hamari Search Result for User ID 1003542223
3	Chart of Hamari Search Result Summary
4	Hamari Search Result for User ID 91061656
5	Hamari Search Result for User ID 1000149235
6	Hamari Search Result for User ID 1003476046
7	Hamari Search Result for User ID 82335448
8	Hamari Search Result for User ID 23910960
9	Kijiji Ad for 2007 Nissan Maxima
10	Sunridge Nissan Bill of Sale
11	Decision dated July 10, 2017
12	Decision dated September 5, 2014.

Facts & Evidence:

7. Mr. Gader is the sole shareholder and director of 1802580.
8. On March 24, 2014, 1802580 was issued a 12 month conditional automotive business license which was cancelled September 8, 2015. On July 16, 2016, the corporation applied for a wholesale automotive business license. As a result of the prior cancellation an administrative review was conducted. Effective November 30, 2016, a wholesale automotive business license was issued to 1802580 to operate as "Calgary Truck & Automotive Sales".
9. At all material times, Mr. Gader was the sole registered automotive salesperson for 1802580.
10. Heather Ewasiuk is a peace officer and has been an AMVIC investigator for 4 years. Her investigation of 1082580 and Mr. Gader arose from an unrelated investigation, not any complaint. From AMVIC data she learned Mr. Gader's prior license history, his address, phone number, and current details of his salesperson license and 1802580's wholesale license.

11. Ms. Ewasiuk then conducted an online search for Mr. Gader's phone number using Hamari which is an online search tool available to law enforcement. Using the search results, she conducted additional searches. From the results, Ms. Ewasiuk compiled a list of vehicles advertised for sale on Kijiji or Ebay, all which were directly connected to identifiers unique to Mr. Gader's known or related phone numbers or email addresses.
12. In January, 2017, posing as a potential buyer, Ms. Ewasiuk arranged a meeting to inspect one of the recently advertised vehicles, a 2007 Nissan Maxima (the "Maxima"). The vehicle was advertised to be "for sale by owner". The contact phone number in the ad was a known number for Mr. Gader's brother.
13. Ms. Ewasiuk met with a gentleman to inspect the Maxima who represented that he had owned the vehicle for one year. This person's first name matched that of Mr. Gader's brother.
14. Subsequent searches revealed that this person did not own the Maxima which had been purchased approximately 2 weeks earlier by 1802580 from a Calgary car dealership.
15. The results and information from her searches and inspection of the Maxima, confirmed to Ms. Ewasiuk that 1802580 was selling vehicles to the public. This violated the restriction of a wholesale business license and was the basis for the July 10, 2017 decision of the Director of Fair Trading (as Delegated) cancelling 1802580's wholesale business license.
16. The cancellation of Mr. Gader's salesperson license followed because he was the only salesperson licensed through 1802580.
17. On cross-examination, Ms. Ewasiuk acknowledged that with the exception of the ad for the Maxima, all other advertisements linked to Mr. Gader's phone number were posted online before 1802580 applied on July 16, 2016 for the wholesale business license. Ads posted subsequently were linked to another phone number, that of Mr. Gader's brother. She also acknowledged that there was no evidence that Mr. Gader had posted those ads or the ad for the Maxima.
18. Mr. Gader acknowledged that he had been curbing cars prior to cancellation of 1802580's first license in 2014 and prior to the application for the second license on July 16, 2016. However, prior to that application he had ceased that activity and had since carried on business as required by the Fair Trading Act and regulations.

19. He denied any knowledge of any of the vehicles linked to his brother's phone number and any knowledge of any transaction relating to any of those vehicles.
20. Mr. Gader acknowledged that 1802580 had purchased the Maxima which was given or sold to his brother. The purpose was to provide his brother transportation to and from school. Mr. Gader had also given his brother an old laptop computer.

Argument:

21. AMVIC submits that there is ample evidence to infer on a balance of probability that 1802580 were selling motor vehicles to the public while not properly licensed. This is established through the direct links connecting Mr. Gader's phone numbers, email addresses and the unique on-line identifiers for the noted web sites.
22. Notwithstanding, the direct evidence of the sale or gift of the Maxima by 1802580 to Mr. Gader's brother is proof of a sale to a consumer. This is a violation of 1802580's wholesale business license.
23. In view of the significant prior history of curbing vehicles, AMVIC contends that the July 10, 2017 Orders cancelling the licenses should be upheld.
24. Mr. Gader submits that cancellation of the licenses was unduly harsh and the licenses should be reinstated with appropriate conditions. He did not consider the gift of the Maxima to his brother in the context of a sale to the public. He was trying to assist a family member, nothing more.
25. Mr. Gader contends that he did not have any knowledge of any of the vehicles linked to his brother's phone number or of any transaction involving any of those vehicles.

Findings:

26. With the exception of the Maxima and the vehicle listings linked to his brother's phone number, all of the web site posting dates precede July 16, 2016. This is the date 1802580 applied for a wholesale business license. That license was granted 4 months later after AMVIC had conducted an administrative review. The nature and depth of such a review isn't known. However, the Hamari search information detailed by Ms. Ewasiuk was presumably available during the review process. If the information was considered and the license granted

notwithstanding, it is difficult for AMVIC to later rely on the information to justify cancellation of the licenses.

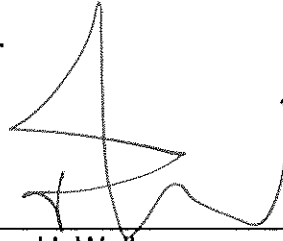
27. The Appeal Board does not know if that search information was considered in granting the wholesale business license and does not give significant weight to the advertisements posted prior to July 16, 2016.
28. There isn't a sufficient link between 1802580 or Mr. Gader, and those listings posted after July 16, 2016 which are directly connected to the brother's phone number. Those listings are not evidence that 1082580 or Mr. Gader was selling vehicles to the public. The sibling relationship is not sufficient to link those listings to Mr. Gader or 1802580.
29. Further, the Appeal Board does not accept Ms. Ewasiuk's assertion that the Hamari search information alone is evidence that 1802580 or Mr. Gader was selling vehicles to the public.
30. However, AMVIC is correct that the sale or gift of the Maxima to Mr. Gader's brother was a violation of the wholesale business license. However, the Appeal Board accepts and considers the following to be relevant:
 - a. The family relationship is such that Mr. Gader and his brother were not arm's length;
 - b. Mr. Gader's only intent was to assist his brother;
 - c. There is no evidence of any financial gain or consideration received by 1802580 or Mr. Gader from his brother or any 3rd party;
 - d. AMVIC's investigation was not the result of any complaint about 1802580 or Mr. Gader;
 - e. There isn't any evidence of any harm suffered by any person;
 - f. There isn't any evidence that the Maxima was not roadworthy;
 - g. There isn't any evidence of that 1802580 or Mr. Gader engaged in any unfair practice in relation to the gift or sale of the Maxima to the brother.

Decision:

31. The Appeal Board finds that on the facts the cancellation of both licenses was unduly harsh.
32. The Appeal Board hereby varies the decisions of the Director of Fair Trading (as delegated) as follows:
 - a. The automotive wholesale business license of 1802580 Alberta Ltd.

- operating as "Calgary Truck & Automotive Sales" is suspended for 120 days commencing July 10, 2017;
- b. The automotive salesperson license of Amil Gader is suspended for 120 days commencing July 10, 2017.

Signed at Calgary, Alberta on November 27, 2017.

A handwritten signature in black ink, appearing to be 'J. Welbourn', written over a horizontal line.

John H. Welbourn

A handwritten signature in black ink, appearing to be 'James B. Isaacs', written over a horizontal line.

James B. Isaacs