

**IN THE MATTER OF AN APPEAL BY DOUBLE M DEALS AND BELAL SALEM
PURSUANT TO 179(1) OF THE CONSUMER PROTECTION ACT**

Hearing Panel: Virginia May, Hearing Chair
Bill Klasky, Panel Member
JB Isaacs, Panel Member

Appeal by: Belal Salem o/a Double M Deals

Held on: October 19, 2018

Held at: Room 301, 7015 Macleod Trail S.W., Calgary, Alberta

Order appealed: April 5, 2018 Director of Fair Trading (as delegated) to:

- a. To **Cancel** the issued Provincial Automotive Business License for Belal Salem & Mohamed Salem operating as Double M Deals.
- b. To **Cancel** the sales person registration of Mr. Belal Salem.

Persons Attending:

For the Director: Paula Hale. Counsel for the Director.
Nina Mourelatos. Investigator with AMVIC (witness).

For the Appellant(s): Percy Pyra ,Counsel for the Appellants
Belal Salem, Appellant on his own behalf and on behalf of
Double M Deals, Appellant

Observer Judy Bessell (first year lawyer)
Director and Appellant agreed to the presence of the observer.

DOCUMENTS RECEIVED (DETAILED IN THE APPENDIX)

Director: Jurisdictional documents and Directors' order.
Exhibit Binder
Summary table of Non Auction sales.

Appellant: None submitted.

JURISDICTION:

This appeal is pursuant to sections 179(1) (c) and 127 (c) of the Consumer Protection Act and its regulations.

Appeal to the Appeal Panel

179(1) A person

- (a) who is refused a license or renewal of a license,
- (b) whose license is made subject to terms and conditions,
- (c) whose license is cancelled or suspended under section 127,
- (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, order or administrative penalty by serving the Minister with a notice of appeal within 30 days after being notified in writing of the decision or order or being given the notice of administrative penalty.

(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).

Pursuant to S 179 (4) of the CPA, David Morhart, Deputy Minister of Service Alberta appointed an Appeal Board to hear the Appellants' Appeal. The appointment is dated 2nd May 2018.

The Appeal Board hearing took place on October 19th 2018. It was conducted by a three person board; Virginia May, Chair, J.B. Isaacs member, Bill Klasky member.

Appeal filed

The Appellant Belal Salem filed a Notice of Appeal on behalf of the Appellants pursuant to S 179(1) of the Consumer Protection Act (CPA) (formerly the FTA) from the decision of the Director to cancel the Business License of the Appellants and the salesperson license of Belal Salem.

The Directors Decision is dated April 5th 2018. The Notice of Appeal is dated as being received in the Office of the Minister April 12th 2018.

The grounds of the Appeal were that the Director's decision was harsh and unnecessary.

Refusal, suspension, cancellation, terms

127 The Director may refuse to issue or renew a license, may cancel or suspend a license and may impose terms and conditions on a license for the following reasons:

- (c) in the opinion of the Director, it is in the public interest to do so.

- [1] There were no objections to the composition of the Appeal Board.
- [2] There were no objections to the jurisdiction of the Appeal Board.
- [3] The Appeal Board determined that it has jurisdiction to hear this appeal

PROCEDURE

- [4] The Director's case was heard first by agreement of counsel.
- [5] Oral evidence was called by the Director and the Appellants
- [6] All oral evidence in this Appeal Hearing was taken under affirmation.
- [7] All witnesses were subject to cross examination and questions from the Board.
- [8] The hearing was open to the public
- [9] A brief oral submission was heard from the parties at the end of the hearing.
- [10] No written submissions were requested or required.
- [11] Parties were advised they would be provided with a decision by December 3, 2018.
- [12] Jurisdictional documents set out in Exhibit D1 were made available to the Appellant, prior to the hearing.
- [13] The Board acknowledges that pursuant to 179 (8) of the Consumer Protection Act that an appeal under 179 (1) of the Consumer Protection Act is a new trial of the issues.

179(1) A person

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- (b) whose license is made subject to terms and conditions,
- (c) whose license is cancelled or suspended under section 127,
- (d) to whom an order under section 129 or 157 is directed, or
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may appeal the decision, order or administrative penalty by serving the Minister with a notice of appeal within 30 days after being notified in writing of the decision or order or being given the notice of administrative penalty.

(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, order or administrative penalty that is being appealed.

(7) The Minister may, in accordance with any applicable regulations under the *Alberta Public Agencies Governance Act*, 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, order or administrative penalty being appealed.

RSA 2000 cF-2 s179,2005 c9 s63,2009 cA-31.5 s40,2012 c7 s1

DECISION

[14] Appeal is allowed in accordance with 179(6) of the Consumer Protection Act;

179 (6) An appeal board that hears an appeal pursuant to this section may confirm, vary or quash the decision, order or administrative penalty that is being appealed.

by varying the Director's Order of April 5, 2018 in that:

1. The business license B1024620 of Double M Deals is **reinstated, with conditions of July 5, 2011**, as of January 1, 2019, and
2. The salesperson license S1022507 of Belal Salem is **reinstated with conditions of July 5, 2011**, as of January 1, 2019, and
3. The payment of \$1000 investigation costs prior to reinstatement.

[15] In reaching this decision the Appeal Panel took note the business license S1020088 for Mohamed Salem expired on June 30, 2018 and was not made subject to this appeal and therefore is not addressed in this decision.

[16] The Board noted that the Director's Decision of April 5, 2018 incorrectly stated Belal Salem's Provincial Salesperson Registration Number to be S1020088 and the Appeal Notice filed by Belal Salem repeated this mistake. The license issued to Belal shows it to be S1022527 (EXHIBIT D2, Tab C, page 19.) That this mistake was not of such sufficiency to be fatal to the appeal.

[17] That the undertaking by Double M Deals and Belal Salem entered into in 2011 was for one thousand dollars (\$1000.00) which the Appeal Panel concluded was imposed in accordance with Fair Trading Act and that Consumer Protection Act replacement thereof, Section 176 (1) in relations to costs of the investigation are similar and appropriate in this reinstatement of the licenses.

BACKGROUND

[18] Double M Deals was first issued an AMVIC Wholesale license on August 29, 2007 with Belal Salem and Mohamed Salem registered as partners in the business. Belal is the son of Mohamed.

[19] In 2017 Nina Mourelatos, investigator with Alberta Motor Vehicles Industry Council opened an investigation into the activities of Double M Deals and Belal and Mohamed Salem as the result of an anonymous complaint.

[20] Her Investigations into the history of Double M Deals revealed four previous matters related to Double M Deals in 2010 and 2011.

The first matter was a consumer vehicle advertised for sale on Kijiji, a consumer went to the Salem residence and put a \$200.00 deposit on the vehicle, however, he did not purchase the vehicle. Double M Deals did not return the deposit. As a result of AMVIC a settlement was reached and as Double M Deals was licensed for wholesale only they were advised of the regulations and reminded that they only had a wholesalers licence. – AMVIC Case#211243.

The second matter was that Double M Deals was selling vehicles retail with a wholesale license An investigator advised Double M Deals by phone to cease and desist from retail sales and issued a follow up letter of same. – AMVIC Case#212767.

The third matter was Double M Deals was selling vehicles retail and was only licenced wholesale. Double M Deals was advertising on Kljiji .The case was cross referenced with Case numbers # 212767 and #212804 .Double M Deals sold a vehicle retail 5 days after the investigator advised Double M Deals not to. - AMVIC Case#212804.

The fourth matter was an Administrative Hearing held because of the previous actions of Double M Deals which resulted in conditions being placed on Double M Deals license and Double M Deals being required to enter into an undertaking. Furthermore Double M Deals was required to pay an Investigations cost penalty of \$1000– AMVIC Case#212871

[21] As part of the 2017 investigation following the anonymous complaint Investigator Mourelatos obtained auction lists from Regal Auctions of Calgary, Alberta for the period of April 19, 2017 to October 14, 2017 and Adesa Auctions of, Calgary Alberta for the period of April 16, 2017 to October 16, 2017 pertaining to the activities of Double M Deals.

[22] Investigator Mourelatos randomly selected 41 vehicles from the auction billing lists and Double M Deals was requested to provide bills of sale for these vehicles.

[23] On January 30, 2018 Belal Salem was interviewed regarding the sales of the vehicles and discrepancies as to the purchaser of the vehicles as listed on the bills of sale.

[24] As result of the AMVIC investigation an Administrative Review in front of Mr. G. Gervais, Director of Fair Trading (as delegated) was held on March 7, 2018.

[25] In a letter dated, April 5, 2018 Mr. G. Gervais, Director of Fair Trading (as delegated) notified Double M Deals and Belal Salem that Double M Deals, business license , B1024620, and Belal Salem Salesperson license , S1020088, were cancelled. The letter also advised Double M Deals

and Belal Salem of the right to appeal the decision by serving the Minister of Service Alberta, Honourable Stephanie McLean, with a Notice of Appeal within 30 days of receipt of the letter.

- [26] On April 12, 2018 the Office of the Minister of Service Alberta received a Notice of Appeal from Belal Salem of Double M Deals appealing the Directors decision to cancel Double M Deals Business license B1024620 and Belal's sales license S1020088. Belal's licence plate number is actually S 1022527 (page 19 of Exhibit D2). Licence S102008 is the licence of Mohamed Salem, not an issue in this appeal.
- [27] Belal Salem in the Notice of Appeal cited that he felt the decision made was harsh and unnecessary.

EVIDENCE SUBMITTED

- [28] Counsel, Paula Hale, for the Director submitted these documents, without any objection, into evidence at various times during the hearing:
1. Binder containing Jurisdictional documents and Directors' Decision marked Exhibit D1.
 2. Binder containing Directors' Exhibits marked Exhibit D2.
 3. Summary table of Non Auction sales (1 page) marked Exhibit D3.
- [29] Appellant did not submit any documentary evidence but relied upon the Directors' documents.

Directors' Witness:

Testimony of Nina Mourelatos, investigator with Alberta Motor Vehicles Industry Council.

- [30] That she is an AMVIC Investigator and has held this position for just over 1 year. Her previous position in AMVIC was industry standards officer, a part of the compliance department. where, her main role was to perform inspections and educate the businesses
- [31] Previous to AMVIC she was with ATB in the compliance dept. to make sure the branches were compliant with respect to all the policies and procedures.
- [32] That a complaint filed with AMVIC gets assigned to an investigator and this one was ultimately assigned to her. After she carries out an investigation, she makes a determination whether there is evidence of a breach of a violation.
- [33] She explained the spectrum of options available:
Under the heading of "progressive enforcement" they can range from a:
- verbal warning ,
 - warning letter,
 - director's order which is essentially a cease and desist order,
 - administrative hearing with various recommendations consisting of:
 - cancelation,

- suspension etc.
- a conditional license laying charges under certain sections of the Criminal Code, CPA and Traffic Safety Act.

However, the final decision is up to the Registrar only and not her.

- [34] That she communicates results and recommendations through filing an application report: with a summary of the complaint, findings, supporting documentation and her recommendations. This then gets submitted to the manager, gets escalated and ultimately gets reviewed by the Registrar and gets scheduled for a hearing.
- [35] That if she resolves the issue, she doesn't always file an application report e.g. when it is a 1st offence.
- [36] That Tab A of Exhibit D2 is the application report recommending a license review in this case.
- [37] In this particular case an anonymous complaint had been received by AMVIC indicating Double M Deals was selling direct to the public.
- [38] That she wanted to see what Double M Deals was actually licensed for so went to CRM-customer relationship management database that houses all their info about businesses license s. Tab D of Exhibit D2 is the actual license certificate for Double M Deals that confirms they are licensed for wholesale only.
- [39] That Tab B, page 11 of Exhibit D2 shows a core search-database of corporate info that indicated Double M Deals is a partnership between Mohammed and Belal Salem with the same address
- [40] That Tab B, page 13 of Exhibit D2 is a Google map of their office location which is their home, it shows residential area.
- [41] That Tab C, Page 14, shows who the registered salespeople are under Double M Deals- Mohammed and Belal with corresponding registration numbers's. Mohamed's licence number is S1020088(page 23of Ex D 2).Belal's licence number is S1022527(see page 19 Ex D2) Page15 indicates CRM regarding business of Double M Deals. Pages.19 to 22 is specific salesperson registration for Belal which shows registration numbers, license expiration and certificate issue dates. Pages.23 -26 is the corresponding registration for Mohammed shows registration numbers, license expiration and original issue dates.
- [42] To her knowledge Mohammed and Belal are the only salespeople for Double M Deals.
- [43] That Tab D Pages 27 to 45 is historical data of four complaints against Double M Deals on CRM in 2010/2011 in the current database system since 2014. She then gave a brief summary of each. This info is housed in separate system CATS, which is an older database that someone else with access pulled because it was before her time; she was not involved in any of those investigations.
- [44] She stated every investigation filed that is assigned to an investigator has a unique case file number based on findings of each investigator for that specific investigation.

- [45] That Tab D of Exhibit D2, Pages 27 & 28 Case #211243, was a complaint about a deposit-Double M Deals advertised vehicle on Kijiji where a \$200 deposit was not refunded by Double M Deals and customer filed a complaint. Outcome: Double M Deals was reminded by AMVIC that they are only licensed for wholesale and the deposit was refunded. The complaint was opened on Mar 3, 2010, and she pulled it in from the system in 2017.
- [46] That Tab D of Exhibit D2, Pages 29, 30 & 31 Case #212767, was a complaint where Double M Deals sold retail and refused to refund \$400 deposit from the customer and they did not disclose vehicle history. The deposit issue was resolved. Double M Deals was reminded by AMVIC by phone and letter to not sell retail and adhere to their wholesale license and a hearing application was submitted. That the Complaint was opened June 02, 2011.
- [47] That Case #-212804, Tab D of Exhibit D2. Page .32 Double M Deals sold retail 5 days after the investigator told them not to sell retail as set out in case #212767. That this case involved the same vehicle as case #212767. The case was opened on June 13, 2011 and that the investigator recommended an Administrative Hearing and both cases be dealt with.
- [48] That case #212871, Tab D of Exhibit D2 pages 35 & 36 deals with the administrative hearing held for Double M Deals and a decision made to provide the opportunity for a conditional license on the signing of \$1000.00 undertaking.
- [49] That Tab D of Exhibit D2 page 37 is the letter dated July 5, 2011 from Bob Knight; Acting Director (as delegated) Fair Trading Act .It outlines the conditions and the requirement of a \$1000.00 undertaking. That Mohamed and Belal Salem signed and dated the bottom of the letter accepting the conditions and signed an undertaking.
- [50] That Tab D of Exhibit D2, page 38 is the undertaking signed on July 7, 2011 by Mohamed Salem and Belal Salam O/A Double M Deals and accepted by AMVIC on July 11, 2011.
- [51] That Tab D of Exhibit D2, page 39 is the July 4, 2011 notes of the AMVIC Registrar taken at the time of the hearing.
- [52] That Tab D of Exhibit D2 pages 40, 41 & 42 relate to documents that show how close Double M Deals, Mohamed and Belal Salem were to having their licenses canceled.
- [53] That Tab D of Exhibit D2 page 45 is a warning letter to Double M Deals, Mohamed and Belal Salem that the automotive business is a regulated business to not engage in operating a retail automotive business, if they are, and to cease all unlicensed activity.
- [54] That Tab A of Exhibit D2 pages 1 to 4 is the Application Report outlining; previous complaints against Double M Deals, Mohamed Salem, Belal Salem, as set out above and steps taken in the investigation, relevant legislation and the recommendation. It is signed by the Senior Manager of Investigations.
- [55] That in this investigation she contacted two large automotive auction companies by email; Regal and Adesa requesting bidder lists for Double M Deals.

- [56] She received auction lists from Regal for the period April 19, 2017 to October 14, 2017 and Adesa April 16, 2017 to October 16, 2017.
- [57] That Tab E of Exhibit D2 page 46 is the list received from Regal with first date being 4/19/2017 and the last 10/14/2017 containing transactions for 41 vehicles.
- [58] That Tab E of Exhibit D2 pages 47 to 51 shows the list from Adesa Auctions from 04/16 2017 to 10/16/2017 containing transactions .
- [59] That she randomly selected 22 vehicle from the Regal list and 19 from the Adesa list, Tab F of Exhibit D2 Page 53, which she provided to Salem Belal by email. Tab F of Exhibit D2 Page 62. That in her email she requested Belal to provide copies of the bills of sale for these vehicles by December 4, 2017.
- [60] That Tab F of Exhibit D2 page 54 is a spread sheet she prepared. The 1st column is a number for the transaction, the 2nd identifies if the vehicle came from Regal or Adesa and the details of year, make, model and type, the 3rd is the vehicle serial number, the 4th type of transaction (wholesale or retail), 5th purchasers name, 6th is her notes upon reviewing the documents. The colour code is white were no problem, green purchaser has a wholesale license; yellow purchaser has a retail license.
- [61] That Tab F of Exhibit D2 pages 56 to 70 are the bills of sale Belal supplied by December 4, 2017.
- [62] That she examined bills of sale not sold to auction and used the CRM system to see if the purchaser was licensed. Tab G of Exhibit D2 pages 71 to 130 are the license s from CRM. That she called all of them to verify the transaction as listed on the bill of sale.
- [63] She contacted all of them by phone and asked for them to verify the sales. She received email responses.
- [64] That Exhibit D3 is a summary table of the 16 non-auction sales: column 1 is the number as per Tab F of Exhibit D2 Page 54, column 2 is the Purchaser, column 3 is the bill of sale as per Tab F and page number, column 4 is AMVIC license and page number as per Tab G of Exhibit D2 and column 5 is her notes, emails to purchaser and their response and page number as per Tab H of Exhibit D2.
- [65] She then went through several examples from D3:
- 1 - Best Deal Auto- has AMVIC retail and wholesale license – no concern
Tab G.p.71=confirmation of license. They confirmed they purchased it.
 - 2 - AB Recycling-not Amvic registered. Not licensed. If no license it was considered a retail deal.
 - 3 - sale #7, p.57-JJ Auto Services-licensed with AMVIC. Double M Deals can sell to them.
Pp.76-77-garage and used sales on their license; used sales mean they are properly AMVIC licensed. On the surface, everything appeared in order. However, when Investigator Mourelatos contacted the owner by telephone and in person, the owner had no recollection.

P132 tab H is his email confirmation. Jan 22, 2017 bill of sale dated June 2017 means time passed before verified. Investigator Mourelatos asked each business to go through their database to check. JJ Auto Services did not purchase and had no record of ever buying this vehicle.

4 - transaction #15 and 16, bills of sale on pages 58 & 59, Transport International. Not in AMVIC. When contacted, they confirmed they bought the said vehicle; this was considered a retail deal.

5 – transaction #17 Napoli-no issue-AMVIC licensed and a confirmed purchase.

6 – Transaction #19 bill of sale , p.61. Wrong phone number, CRM showed AMVIC inactive license since 2015 and did not purchase from Double M Deals and did not have any record

7 - transaction #21, p.62 Antonio, number was incorrect on bill of sale, not in CRM or in any system, no name or person on bill of sale, no evidence connected. Investigator Mourelatos concludes this is a retail deal because she could not find this person on CRM system.

8 - transaction #23 p63. Zaxs Auto and Equipment Sales. Retail sales-licensed, pages.94 to 98. Licensed for retail/wholesale, on CRM system. The incorrect phone number was on bill of sale. She contacted Zax's and explained; He asked for a copy of the Bill of sale to see what signature was on it. He then verified there was no record, and the signature was not his, p.137 with the confirmation email on p.135. P.136 was initial email with Bill of sale attachment.

9 - transaction #24 p64 not in AMVIC; under Evan Lyle, Lyle Evan, and registered numbered company p.64. Wrong #. If out of service or someone else answered, Ms S would have to look at her more detailed notes.

10- transaction #26, p65 BoS, J&J Truck and Auto Sales, pages 99 &100.Licensed AMVIC for garage and used sales, based out of Edmonton.

When contacted they said that:

- they did NOT purchase this vehicle p.138,
- they never heard of Double M Deals, and
- they rarely deal with Calgary businesses.

11 – transaction #28, p.66. Towing and Recovery, found under Adams Towing and Recycling-closest address to Bill of sale. P.105. AMVIC licensed for wholesale, p104. Different address on system than Bill of sale but correct phone number. Investigator Mourelatos called and spoke to Adam; no record of purchase. He then responded by email, p.139
Most of the Bills of sale, some of the address info was not 100% but close to CRM.

12 - transaction #31, p.67. Bill of sale, Dynasty Auto, AMVIC licensed only for specialty service. No record of purchase was found and they don't know why their info is on the Bill of sale, email p.140.

13 – transaction #32, p 68.The Wax Shop was previously AMVIC licensed, cancelled in 2014. When contacted they did NOT purchase this vehicle and they don't know why their info is on the Bill of sale, p.142, email. If one searched for The Wax Shop on website, result would be either license cancelled or nothing would come up.

14 - transaction #34, p. 69. TNL Cleaning Corp. Confirmed purchase, but the issue is they are not licensed.

15 – transaction #35, p.70. Prime Auto Body. AMVIC licensed garage and Service station only. No record of purchase from Double M Deals, email on p.146.

[66] That the AMVIC website contains all information necessary to verify a license.

[67] That of the 16 transactions reviewed:

1. 8 were not purchased by the name on the bill of sale ; 2, 7, 19, 23, 26, 28, 31, 35.
2. 2 unable to confirm either way; 21, 24.
3. 1 purchased but not licensed; 1.
4. 5 were confirmed.

[68] She stated that a business is required to maintain accurate records. The Bill of sale must be a true reflection of the transaction.

[69] That it is in the regulations that wholesalers are responsible for verifying that they are not selling retail or to a member of the public. That this is in the regulations they receive.

Tab 5 of Exhibit D1, Automotive Business Regulation, Alberta Regulation 192/199.

- a. s.10 of the ABR imposes duty on all licensees
- b. s.10 of the ABR imposes duty on all licensees
- c. s21.1 no business operator may allow a salesperson to act on their behalf unless they are registered and authorized.
- d. s.21-business has to notify if a salesperson is no longer authorized to act, within 15 days...
- e. s.10 every business operator must produce a license when requested by a customer, potential customer or peace officer

[70] In response to questions from Appellants' counsel, she stated that that the website contains businesses with an AMVIC license and what they are licensed for. You can search by business name, number and person that you are dealing with to see if they are an AMVIC licensed salesperson.

[71] A panel member asked what was the responsibility of a wholesaler to verify to whom he is selling and she responded ,it is in the regulations.

[72] Referring to the AMVIC website she would have to check if all sales people licensed for a business would be listed under the business. A different link from the one that brings up licensed business may be necessary to bring up the licensed sales people.

[73] That she reached the conclusion that Double M Deals was selling to the public contrary to their license and their signed undertaking. Consequently she recommended a hearing for license review.

[74] In response to a panel question; she stated her investigation to determine who purchased the eight vehicles mainly involved looking in "Road System" and saw no evidence of the business being the registered owners, for example: Wax Shoppe, Prime Auto Body.

[75] In response to panel question as to whether she searched who registered the vehicles in question she stated she only searched on the system of businesses registered, and not who subsequently registered the vehicle. She only determined and verified whether these vehicles were purchased wholesale or retail. She did not determine who actually registered the vehicle and which Bill of sale was used. It could have been done but this meant she would have had to request the information. She does not have direct access .to that system.

Appellants' Evidence

Testimony of Belal Salem

- [76] That he took the 8 hour Amvic course in 2007; it covered the Rules and Regulations, the dos and don'ts. He received no material at that time nor since .No information was sent out by AMVIC on a regular basis.
- [77] That he did receive a certificate showing he was a licensed salesperson. It was about 8x11 inches, but there was no small ID card to show. Nobody receives a small ID card.
- [78] That he did not find out about the website until February, when he had his meeting with Nina Mourelatos She told him to check the website.
- [79] That since then he searched the website twice and had difficulty because you must be so precise. He found it difficult to use. He found when you searched out a name by a letter or by the business, it won't come up or tell you that they are licensed .It will say they are inactive or the site is down for construction.
- [80] That at auctions he always sees unlicensed purchasers of vehicles on a weekly basis.
- [81] He stated that Tab A of Exhibit D2 He explained the case#212767 involved a deposit, June 2011 &3. #212804 follow-up which involved a sale-Pontiac wave. This involved his father only, who took the deposit and subsequently sold the vehicle to a different person. After taking a deposit, the customer called asking for a refund. These two cases were cross referenced. He was on vacation and not personally involved with either the deposit or the subsequent sale. Both of these cases only involved his father.
- [82] He asked why on page 33 of Tab D page 33 suggests he gave a different explanation to the investigator at the time
- [83] That the result of the four cases in 2011 was an administrative hearing.
- [84] That he is the only salesperson now in Double M Deals. He is the sole person operating the company and he wants to be responsible for his own actions. He does not want to cling on to his father, Mohamed Belal.
- [85] Explained his father's sales license was cancelled. That his dad has had a stroke. They both signed the undertaking and were advised not to sell to retail.

- [86] That the vehicle -1998 Honda CRV- AB Recycling, (highlighted in yellow on page 54 in Tab F of Exhibit D2), was purchased and sold at Regal Auction. The purchaser was driving a tow truck with a sign on the vehicle-. That he assumed he was a licensed - wholesaler, retailer, and scraper with a legitimate business you could sell to; he had no idea he wasn't licensed.
- [87] That nobody carried around certificates of license it's not convenient, they are too big No wholesalers carried around certificates at this time, only-retailers with a city license. He thought he could sell to them because he saw the same drivers all the time.
- [88] In relation to number 7 on page 54 in Tab F of exhibit D2, that the vehicle was a2008 Malibu. He was approached by someone he saw consistently at the auction. He saw the purchasers' mechanic's card with an ID number which was something you can't make up. He researched the mechanic's blue card and found it was a journeyman certificate under JJ Auto Services. That he doesn't remember the name on the card.
- [89] The circumstances of numbers 15 and 16 on page 54. The purchaser was regular at Regal Auction. His name is Ceasar and he knows he ships vehicles to Nigeria. That Ceasar buys two vehicles at once, not like a regular retailer which is why he believed he was wholesaler like himself.
- [90] Number 19 on page 54, was One Stop Auto Repair involved a BMW, it needed some type of repair. The purchaser said his family owned the repair shop and he bought it in his cousin's name. He gave him a legitimate name; He thought he was a legitimate guy, a regular guy.
- [91] Number 21 on pages 54, He was at Regal Auction and sold a vehicle on same day he purchased it, Oct 14. That he was approached by an individual after the auction who said he had missed it and wanted to buy it for his son. The man was a regular at Regal Auction.
- [92] Number 23 on page 54, Zax Auto and Equipment Sales shows to be licensed but says it is not his signature. Someone offered to buy the truck with a bill of sale with that information. That he has no idea why this would happen.
- [93] Number 24 on Page 54, that AB Wholesale is a numbered Co. from Lethbridge. They approached him at Regal Auction to buy the vehicle. That he was regular who did bigger sales of trucks and SUVs.
- [94] Number 26 on Page 54, that he was approached by Allan a regular, young brown guy who said he was one of J & J Auto employees. He would see him all the time.
- [95] Number 28 on page 54, that he sold to a tow truck driver, in front of Grand Auction parking lot, the man was regularly seen there and would buy for scrap.
- [96] Number 31 on page 54. That he sold it right in front of the shop of Dynasty Auto. That someone came out of the shop and said he was an employee purchasing it as a beater.
- [97] Number 32 on page 54. The Wax Shop is a retail shop and offered to purchase the vehicle. He was told they had no idea the license was cancelled and didn't want to get in trouble. So when asked by the investigator; the speaker for the business had said he didn't purchase the vehicle.

- [98] Number 34 of Page 54, that T&T Cleaning was a company and he had no reason to doubt that. He was approached outside the auction. That he didn't know what their purpose was in purchasing the vehicle.
- [99] Number 35 on Page 54 that he had Prime Auto Body and did repairs. He was regularly seen at the auction. He had no reason to doubt him.
- [100] That Double M Deals wholesale license was revoked approximately 1 yr ago; it affects his life; it is his livelihood, how he provides for his family.
- [101] That he wants to be reinstated, not with his dad-, Mohamed. He never wanted to be in business with him. He always took the fall for his Dad.
- [102] If reinstated, he would ensure that he is only selling to licensed wholesalers by looking them up on the website; if it doesn't come up he would photocopy their AMVIC salesperson license and driver's license to see if they had their certificate and what they are allowed to do. At the time he believed tow truck drivers, e.g. Wax Shop had to have an AMVIC license in order to operate.
- [103] In response to the Directors' counsel question he confirmed that in relation to 2011 the same car to complaint 2 and 3 was sold five days after the investigator told them not sell retail. It was his dad involved with all three. The resale of this vehicle was the reason for the Administrative hearing and the undertaking.
- [104] In response to the Directors' counsel question that case #'s 212767 & 212804 was a personal vehicle and sales were totally handled by his Dad. He was away and knew nothing until the meeting afterwards.
- [105] In response to the Directors' counsel question as to difference between the reports on page 33 in Tab D of Exhibit D2 and his explanation today which differs from the explanation provided to the investigator, at that time, because he was on holidays. He changed the date so he could figure out what was going on. They wanted to come earlier but he had no idea what was going on. He may not have told the investigator he was on holidays but his sister was there to help and speak for his father
- [106] That he only sold one vehicle and was not involved in the other cases other than signing the undertaking as required.
- [107] That he took no steps at the auctions at that time to check the purchasers for AMVIC licenses. He questioned why someone would regularly come to an auction and buy vehicles over and over unless they were a wholesaler ? He did not check the website.
- [108] He stated he believes the reason for the denials of quarter of the vehicles sold was that the purchasers didn't want to get in trouble with AMVIC e.g. Wax Shop. He didn't mention this at the administrative review because he has only realized it afterwards.
- [109] That his license was cancelled on 4/5/18.

- [110] That in number 21 on Page 54 Gladys Betemo bought it for son and Belal did not sell it to a company.
- [111] That anyone can get into auction, without ID; they do not need to be AMVIC licensed. They pose so they can get a deal; they did not want to pay the buyer fee or GST at the auction house. If they gave him their regular name, he would not have sold a vehicle to them because they are not licensed.
- [112] That he wants to move forward and not partner with anyone, as everything seems to fall back on him.
- [113] That because his name was on the bills of sale , his fathers' registration was not cancelled but had expired.
- [114] That his Dad had a stroke in December 2016, at 61 years old, and had nothing to do with sales after that.
- [115] That after Double M Deals license was cancelled his dad, with the help of his daughter, applied for another licence. His licence expired in 6/30/2017. He is unlicensed.
- [116] That he told his father he didn't want to do anything with him; he would not help him in the business and he did not want to be a partner anymore. He attended the administrative review in 2011 to give support and to drive him. Mohamed was sick and not all there; he thought that was clear at the administrative review.

Questions and Cross examination

- [117] He agrees with the Board that if the sale was completed on the auction site and you're there, buyers want to buy from someone like him because the buyer does not pay a buyer fee or GST. Therefore, it is a benefit for them and for him to sell. Further that there is no incentive to check on the purchaser at the time.
- [118] In response to the Boards' concern that there are eight cases where the bills of sales are being denied and the concern is they are not real but manufactured. Belal stated that the buyers are afraid for their jobs if they admit they sold to him., particularly when it is an AMVIC investigator phoning and asking the questions.
- [119] Belal offered the explanation that these sales are not manufactured. There is no way he could know the mechanic's license number as on the bill of sale for J.J. Auto (Page 57 in Tab F of Exhibit D2.)
- [120] Investigator Mourelatos said when she followed up with JJ Auto she called, sent him an email, and told him he was not under investigation, and that she only needed to verify a purchase with Double M Deals. She showed him the bill of sale and he recognized his journeyman's cert #-19492. He thought it was odd as he never uses it as an ID. When he showed it to her, he brought it from the vault, in a public area. She had him sign a paper and noted the signatures did not match the Bill of sale. In her opinion it looked like an attempt to match. He told her it is very rare he buys and sells vehicles and if he does it is only from donate-a-car Canada.

[121] Belal responded that he saw him regularly at the auction and at the time of purchase he was shown a blue card, he didn't know the name and thought it was JJ only.

Oral submissions

Mr Pyra, Appellants' counsel

[122] Clearly his client was not taking enough steps to ensure that the people he sold vehicles to were AMVIC licensed. Because he saw individuals consistently, he made assumptions he should not have made. It should be noted that all of his sales were to companies, not individuals.

[123] This throws light on situation that one would not normally expect; too many attend auctions that make representations when not in a position to buy wholesale. Attending regularly is not equal to being a wholesaler, and not sufficient to establish wholesale reliance; further checks must be put in place.

[124] It's obvious every sale needs to be checked out; the fact that they are a corporate entity, or the fact that they are at the auction regularly is not sufficient to establish they are wholesaler.

[125] These are not personal individuals, nor advertisement situations. Almost all of these sales are when the vehicles are taken to an auction, not sold and people approach after the sale occurs. That is when the sale occurs.

[126] If his wholesale license is reinstated; he will make 100% sure the individual is licensed to buy. He was too lax in his investigation but also duped to some degree in 2010.

[127] He should be given a chance to tighten up his approach; it's not a deliberate attempt to do something wrong; he didn't do enough and was not aware enough of the pitfalls in the way he was selling vehicles.

[128] Almost all were auctions; not a situation of advertising and selling privately.

[129] Now he is much more aware after experiencing what has transpired; he will not get caught in this situation again.

[130] In 2010 he was only involved in one instance of selling privately. There is no real breach of provisions to individuals and he was not advertising to sell to consumers.

[131] If reinstated he will follow through and be much more careful in his sales. If you give him a second chance, you will not see him back here again with respect to a breach.

Ms. Hale, Directors' counsel.

[132] You have to make two assessments :
The rational interpretation of events that the Appellant would like you to take,
i.e. That he was duped and didn't take appropriate steps but will, going forward.

However, the evidence shows a quarter of these sales have purchasers denying receiving the vehicle and two cannot be contacted. The logic fails that the purchasers will get in trouble and therefore they just denied it. There is nothing to get in trouble for if you are AMVIC licensed. There was no motivation, if they purchased it. No breach on them or Mr Belal.

- [133] Look at the investigator's correspondence from the stated purchasers. Investigator Mourelatos made it clear on many occasions that they are not in trouble. The Wax Shop does not need an AMVIC license to detail. There is one sale to an individual on this list.
- [134] Look at the evidence and to consider the testimonial explanations from Belal. They are not consistent. Review the notes. His explanations are not good enough.
- [135] It doesn't matter; it may make Belal and his position more sympathetic but he is an AMVIC licensee and has a duty at common law to know and comply with the laws that apply to him as a licensee.
- [136] The record of past interactions are put in not to rehash the conduct in those complaints but simply as evidence. It is not the first time Amvic interacted with Double M Deals on this specific issue; who you can sell to and who you can't sell to.
- [137] There are 2 issues in the legislation, the implication they can have an unlicensed salesperson act for them is not correct. It's all in the legislation.
- [138] It's clear on the website, the salesperson forms, and the business licensing application what class of license authorizes you to do what you want to do.
- [139] s.166 of the *Consumer Protection Act, CPA* states Double M Deals is responsible for Belal's actions, i.e. vicariously libel, though in some respects incidental.
- [140] The panel asks what the position is to deal with Mohamed is; he is still listed in the partnership.
- [141] Ms Hale advises Double M Deals is not a company. Mohamed's business license is cancelled but he is not the subject of this investigation. You only have jurisdiction to say he is licensed or unlicensed; nothing about the partnership beyond that.
- [142] Mr Pyra injects this is not about licensed or unlicensed but the situation is that Belal wants to obtain a wholesale license to carry on.
- [143] Ms Hale responds the problems arose for Double M Deals from Belal's activities that is his bills of sales; it is his conduct that brought Double M Deals into this hearing.
- [144] Mr Pyra refers to prior history that indicates a willful act when Double M Deals, i.e. Mohamed, his father sold retail 5 days after the investigator told him not to sell retail. It was a bitter disregard for totality where it is abundantly clear he should not have done it.
- [145] Ms Hale replies that the 2011 conduct was dealt with and she is not proposing any sanctions. That information is only here as evidence to show that Belal was put on notice several times of the distinction between retail and wholesale.

- [146] **Board** injects it is struggling with whether it is in common law or in practice to see that sort of licence evidence when a retail customer demands to see a certificate, are they shown it.? What happens to the wholesaler approached by JJ etc and says he wants to buy a car? How does he establishes that a person is in the automotive business of recycling, dismantling and needs an AMVIC license.
- [147] **Ms Hale** states there is no advantage to Belal to check license at auction but that is the point; you must follow the rules even if inconvenient or to his disadvantage . Belal would not be here if this was a one off sale. If he made any efforts at any time to confirm but he made no effort. He has a common law duty to know and comply with the laws. He knows that from his earlier record, that he has to know who you can sell to and who you cannot sell to. A licensee cannot sell to an unlicensed person. It is Belal's conduct that has brought Double M Deals into AMVIC's view.
- [148] **Ms Hale** states that some are and some are not licensed in the recycling and dismantling business. AMVIC goes after them also.
- [149] **Mr Pyra** states Belal's error was not making a distinction between AMVIC licensed individuals and businesses carrying on under a name. As a result he assumed incorrectly if it was a business, it would be OK. Didn't exercise the due diligence as he should but there is a difference between deliberate breach of the law and not exercising due diligence.
- [150] **Board member** injects over 54% of the presented evidence shows little or no due diligence, just a quick sale.
- [151] **Mr Pyra** says it is surprising the number of people at the auction who are unlicensed and there all the time. Belal only had one instance of one advertisement to individuals in 2010 and did not repeat this mistake. He changed what he was doing and therefore should be given a second chance. There is a difference between deliberately breaching and stupidly breaching things.
- [152] **Ms Hale** reminds the Panel they are working on a balance of probabilities. The evidence indicates deliberate obfuscation of these sales. He did understand these rules. He tried to circumvent them with those bills of sale. Beyond the bare evidence of his testimony there is no plausible explanation, Those Interactions with the regulator put him on notice and takes away that he didn't know any better and needs a second chance; he was already on his second chance.
- [153] **Ms Hale** submits that the AMVIC cancellation is appropriate in these circumstances. If you accept this is inadvertence only on his part, you should impose a substantive administrative penalty to let him continue in this industry. The previous fines and undertakings did not deter.
- [154] **Mr Pyra** states a suspension is not a proper penalty for what has transpired; a secondary option is more appropriate e.g. a substantial fine. Now he is totally aware.
- [155] **Board member** asks if the regulations are there for the protection of the public and you take the entire picture, all the evidence and the fact that a person over such a period of time doesn't make the effort to do what's required of him after he has already been warned and fined; if he gets another chance how will the public be protected?

- [156] **Mr Pyra** states that the first instance where he sold directly to the public was a totally different situation than what we have here. He can see someone not overly sophisticated, being lax in what should have been done. Because he saw individuals consistently and because they were companies, he made assumptions that it was OK. He now knows it's not OK, and that realization is with him at the current time.
- [157] That the Website is not easy to get onto, he tried to.
- [158] That AMVIC should do two things; have better training and issue ID cards. If you do not have the card, you can't sell; it would be much easier.
- [159] Many times when individuals see things that occur, they make conclusions as Belal did at the auction. Belal; they are wrong conclusions. . The conclusions are not right. He is surprised at the number of same people consistently at the auctions.
- [160] For a deliberate breach, a second time, a suspension is appropriate,
- [161] It is totally inappropriate to view this case as a deliberate breach. He just wasn't doing his job. He didn't pay attention, took the easy route and created a major problem for himself
- [162] **Board member** comments that maybe the Act needs to be changed so it's clearer.
- [163] **Mr Pyra** stated it is not a situation that he sold vehicles with problems or defects to the public, which is more serious from a consumer point of view. There is a difference between advertising when you were told not to advertise and selling to an individual after you were told not to sell.
- [164] **Board** advised that a decision would be forthcoming within 45 days, which is by December 3, 2018.

FINDINGS OF FACT

- [165] Double M Deals is a partnership with two partners, Mohamed Salem and Belal Salem.

- [166] Mohamed Salem is the father of Mr Belal Salem. Mohamed is in his 60's.
- [167] Mohamed Salem had a stroke, is ill and is no longer involved in any aspect of the business of Double M Deals. He was active in the business in 2011.
- [168] Belal Salem has been the sole operator of Double M Deals in recent years.
- [169] Double M Deals was first issued a wholesale business license by AMVIC on 8/10/2007. The business number was B1024620.
- [170] Belal took the AMVIC salesperson exam in 2007.
- [171] Belal's wholesale salesperson license is No S1022527 .It expired March 31st 2018.
- [172] Belal's licence is NOT S1020088 as stated in the Decision of the Director, dated April 5th 2018 and reflected in Belal's Notice of Appeal, dated April 7, 2018.)
- [173] Belal's salesperson licence was first issued 1/31/2007.
- [174] Mohamed's salesperson license number S1020088 expired June 30th 2018.
- [175] The Decision of the Director was made only in regard to the salesperson license of Belal and the business license of Double M Deals.
- [176] That Mohamed was found to have no involvement in the issues raised by the Director in this Appeal. Therefore the Decision does not relate to Mohamed and there is no finding involving him.
- [177] The Director has cancelled Mohamed's salesperson license in his decision rather than Belal's, in error.
- [178] This Decision has corrected the error of the Director and the same error repeated in the Appeal document .
- [179] Double M Deals operates out of the Salem home at 248 Rundlevue Road N.E. Calgary, Alberta.
- [180] Double M Deals had four complaints raised against it in 2010/11. The first involved Belal. The last all concerned one car and involved Mohamed only.
- [181] Case 211243 involved a complaint from a potential purchaser who came to the house to purchase a vehicle, from a Kijiji ad. A dispute over a \$200 deposit arose. An AMVIC investigation was initiated and the matter settled. The Salems' were reminded they had only a retail license. Belal was involved in this case. This was Belal's one retail sale in 2011 resulting from advertising.
- [182] Cases 212767,212804,212871 involved one car, a Pontiac and did not involve Belal, only Mohamed.

- [183] An administrative hearing was held as retail sales were occurring and the business only had a wholesale license.
- [184] Double M Deals was required to enter into an undertaking and to pay \$1000 investigative cost. The undertaking was signed by Belal on July 11 2011. Conditions were also placed on the business license.
- [185] The undertaking and conditions required Double M Deals to remain in full compliance with all laws relating to the automotive industry and not to sell to the public and not to advertise to sell vehicles to the public. The company was required to comply with the Fair Trading Act from then on.
- [186] Around October 2017 AMVIC received an anonymous complaint against Double M Deals.
- [187] No details of the complaint itself have been provided to the Board.
- [188] As a result of the complaint, assigned by AMVIC to Investigator Mourelatos, the Investigator then contacted a couple of the large car auction houses Regal and Adesa and asked for their bidder lists for a six month period from 4/19/17 to 10/4/17 (Regal) and 4/16/17 to 10/16/17 (Adesa).
- [189] Upon receiving those lists, Investigator Mourelatos randomly selected 41 vehicles to follow up on , 22 from Regal and 19 from Adesa.
- [190] Investigator Mourelatos then wrote to Double M Deals and advised them that she was investigating a complaint received by AMVIC and that she wanted Double M Deals to provide her with bills of sale and documents relating to the bills of sale of the vehicles included in the list she provided.
- [191] There were 41 vehicles listed by make, age and serial number.
- [192] Investigator Mourelatos asked for the documents from Double M Deals to be provided by December 4th 2017.
- [193] Double M Deals provided her with the bills of sale as requested and on time. Investigator Mourelatos said that Belal was always cooperative and timely during the investigation.
- [194] On receiving the bills of sale Investigator Mourelatos set aside the ones showing obvious sales to other auctions as they were not a problem.
- [195] Of the remaining ones, not clearly sold to auctions, she checked for AMVIC licenses.
- [196] Investigations of the 16 reviewed determined eight of the named purchasers on the bills of sale denied having purchased from Double D Deals
- [197] Investigator Mourelatos compared the signature on the bill of sale for J&J Auto to one obtained from the person but did not submit it for hand writing comparison; although in her opinion it appeared to be an attempt to forge the signature. .No evidence was entered on this issue.

- [198] Investigator Mourelatos wrote emails to the purchasers and concluded from emails and letters received back from her enquiries that eight of Double M Deals bills of sale were not made out to the purchaser. She reached this conclusion from searching the Customer Relationship Management system which identifies business licenses.
- [199] Investigator Mourelatos did not include a search of the vehicle identification (VIN) data base to determine if the vehicle was registered to the person on the bill of sale or to a business or a person because she did not have personal access to the system and would have had to ask for the information...She did not confirm with VIN numbers who registered the vehicles.
- [200] Investigator Mourelatos concluded that if the entity listed on Double M Deals bills of sale did not have a wholesale license then it was a retail sale.
- [201] That people licensed by AMVIC s. 10. are provided a large certificate (8in. X 10in.) but no 'wallet size' certificate to carry around on their person
- [202] The Automotive Business Regulations does make it the duty of business operator to produce a license to a customer, potential customer, an inspector or the Director or by a peace officer.
- [203] It is expected of the vendor to check the AMVIC website to find out if a corporation is AMVIC licensed and what kind of license they may have and who is registered as a salesperson.
- [204] Belal found the AMVIC website not easily accessible.
- [205] An administrative review was held on March 7th 2018.
- [206] People in attendance at the administrative review included Investigator Mourelatos, Mr. Gervais, the Director of Consumer Protection, as delegated, and Belal Salem among others..
- [207] Belal attended the administrative review without counsel.
- [208] The Directors order of April 5th 2018 resulted from the administrative review.
- [209] The business Licence of Double M Deals and Belal's salesperson licence were cancelled as of the directors decision.
- [210] Belal appealed the order on the 7th April on behalf of himself and Double M Deals with the notice of the Appeal reaching the Ministry on April 12 2018.
- [211] In his Decision the Director relied on Mohamed Salem's previous breaches in ordering the cancellation of Belal and Double M Deals license.
- [212] The Director recounted three other issues in his reasons for his decision.
1. Alleged failure to provide mechanical fitness assessments to consumers
 2. Alleged failure to Pay AMVIC levies for past sales
 3. Alleged Curbing
 - 4.
- These issues did not form part of this hearing.

They were not raised and no evidence was led by the director on them.

They are not therefore issues in this hearing and of no interest to the panel.

REASONS FOR DECISION

[213] The Board, pursuant to section 179(6) of the CPA is authorized to treat this hearing as a new trial and to make its decision based only the evidence before it, both written and oral.

- [214] The Board is unanimously of the view that the oral and written evidence at the hearing does not meet the balance of probabilities standard of proof to require the cancellation of the Business license number B1024620 and the salesperson license of Belal S1022527 pursuant to S 127 of the CPA.
- [215] Serious allegations were made against Belal of possible forged bills of sales, and sales to non licenced companies as a result of the investigators work on the case.
- [216] Although the Panel understands that eight named corporate purchasers deny purchasing the vehicles identified , the question still remains who did purchase those cars listed on those bills of sale and why was no investigation done using VIN numbers to determine whether any of those bills of sale were actually used in the registration of the vehicles. The Investigator said it was possible to make such an enquiry but she would have to obtain permission to get access.
- [217] The investigation which commenced in the fall of 2017 arose from an anonymous tip provided to AMVIC.
- [218] No information was provided at the hearing on the content of that anonymous tip, but it clearly can be deduced to have involved auction sales because the Investigator Mourelatos immediately started her investigation at auction houses, asking for bidding lists from two of the largest auctions in Calgary, Regal and Adesa.
- [219] Investigator Mourelatos randomly selected 22 cars from the Regal list and 19 from the Adesa list for a six month period in 2017.
- [220] In November she advised Double M Deals that a complaint had been received. She requested from Double M Deals all the bills of sale from the auction bidding lists. That they were required quickly and Double M Deals responded in the time frame provided .
- [221] Belal Salem on behalf of himself and Double M Deals responded to the entire investigation in a cooperative and timely manner.
- [222] Investigator Mourelatos searched the files of AMVIC for past history of Double M Deals and found that in 2011 an administrative hearing of AMVIC had dealt with four complaints against Double M Deals. The result had been a conditional license and, an undertaking with investigative costs of \$1000.00, which was paid.
- [223] The evidence before this hearing showed that Belal was only involved in the first complaint which was resolved and settled with a warning.
- [224] The other complaints that followed involved one car a Pontiac and resulted from the actions of Mohamed on behalf of Double M Deals. Those complaints led AMVIC to feel Double M Deals had ignored the first warning and led to an administrative hearing, the conditional licence ,the undertaking and investigative costs penalty.
- [225] It is clear that the first complaint and warning against Belal would not likely have led to any further action by AMVIC involving Belal's license. He had been given only a warning .
- [226]

[227] It was the clear ignoring by Mohamed of this warning to Double M Deals that led to the Administrative hearing.

[228]

[229] In fact Ms Hale said in her submissions that no further sanctions were required from that the 2011 instance and that the issues had only been raised in this hearing to show that Belal had been warned of the difference between retail and wholesale.

[230]

[231] Later Ms Hale as well as the Director called the events of 2017 Belal's second chance. In 2011 no administrative hearing resulting in an undertaking, conditions and a penalty would have occurred against Double M Deals and Belal but for the actions of Mohamed in the complaints in which he only was involved.

It is the position of this Panel, that it would have been fairer for Belal to have been treated in the 2011 decision as the Director treated Mohamed in this Decision in finding him not involved in the auction activities. However the strict principles of vicarious liability were applied in 2011 and not in 2017.

[232] The result is that Belal has received considerable ongoing penalties in his business life and in matters of Double M Deals.

[233] On the principle of vicarious liability s166 of the CPA, Double M Deals is responsible for the conduct of Belal in this decision. However those principles were not applied by the Director to Mohamed in this decision when he found him not responsible to the partnership.

[234]

[235] The result is that the panel does not regard the evidence of the three complaints against Double M Deals in 2011 as a first strike against Belal and a deliberate ignoring of AMVIC's warning. The warning was the way AMVIC handled Belal's first complaint until his father's conduct.

[236] In 2011, there is no evidence that Belal was involved in any instance other than the one # 211243 that settled with the warning.

[237] The Panel takes the evidence of 2011 in relation to Belal as resulting in Belal and Double M Deals being aware of the limitations of a wholesale license and the conditions that can be placed on a license. It also showed that the actions of either salesperson were treated as actions of Double M Deals.

[238] Following the cancellation by AMVIC for both Double M Deals and for Belal on April 5th 2018 the Appellants have had an informal license suspension denying Belal an ability to earn a living to support his family for currently eight months.

[239] Counsel for Belal stated in his comments that a suspension might have been an appropriate penalty for the events discussed at the administrative hearing of March 2018. An actual suspension has occurred as a result of the cancellation decision of the Director. That is a punishment indeed.

The lack of evidence to prove the ultimate purchaser of the vehicles listed in the bills of sale ,if not the named purchaser ,and whether any of those bills of sale were used for registration leaves the panel with only evidence of denial not willful conduct on behalf of Belal. Suggestion of forged signatures was not followed through or proven, There was no real cross examination of Belal on his plausible stated belief that the company purchasers were afraid of AMVIC when questioned by the Investigator and may have lied.

Further he knew most of the people and he knew there were companies involved.

Certainly lack of due diligence due to the nature of the people at the auction and the familiarity of the. people attending does not deserve suspension and the removal of a livelihood after 11 years in the business.

- [240] The Board is of the view that following the serious time suspension resulting from lack of due diligence of Belal on behalf of Double M Deals reinstatement of the licenses of Double M Deals and of Belal as of January 1st 2019 is appropriate.
- [241] Double M Deals has been operating since 2007. There have been no further issues after 2011 till 2017 when an anonymous tip led to this investigation. Clearly Belal is a wholesaler of cars of some number of years.
- [242] Furthermore the conditional license with the ongoing undertaking and an additional \$1000.00 in investigative costs ought to protect the public, and provide for sufficient oversight by AMVIC and drive the message home there is no more room for lack of diligence.
- [243] The panel notes the Directors' last three lines of paragraph 2 of his April 5, 2018 decision: "It is a simple matter for a wholesaler to ask a purchaser to provide a copy of its AMVIC business license or to search AMVIC's on line database to determine if the purchaser is an AMVIC licensed business." The evidence before this panel does not support such an assertion .
- [244] The evidence of Belal is that there is no ID to ask for, only 8'x11 certificates which people don't carry around with them.
- [245] The evidence also shows that AMVIC provides no written material to its members to help them access the website.
- [246] Belal, when introduced to the website by the Investigator Mourelatos found it very difficult to use to try and find out if someone was licensed or who might be a salesperson of a particular company. This raised the very interesting question of how a vendor is able to verify what, if any license a company may have,either wholesale or retail.
- [247] None of these difficulties, however, remove the requirement of Double M Deals through Belal to ensure due diligence is conducted in all selling and buying.
- [248] Belal thought that knowledge of individuals on a regular basis at the auctions and company names attached to them was enough; it made him feel secure in selling. Belal described the various businesses he had dealt with. He thought they would be wholesale because of their businesses: of scrap, towing, garages, etc.

[249] The Board notes the definition of “wholesale “in the AR 192/99 is not that easy to follow and certainly could include most of the companies that Belal said he was selling to.

“Wholesale means an automotive business that buys vehicles from, sells or consigns vehicles to or exchanges vehicles with other automotive businesses exclusively, and includes an automotive business that buys vehicles from members of the public for sale to other automotive businesses but not to consumers.”

[250] Investigator Mourelatos found eight of the purchases did not go to the purchaser named. There was no attempt to prove possible forged signatures, that suggested bills of sale might be fabricated and since an AMVIC investigator contacted the potential AMVIC Purchasers and asked them to write back and say whether the sale occurred, doubt was raised in the Panels’ minds but as evidence it did not meet the appropriate evidentiary threshold for such serious allegations.

. The evidence presented from the purchasers in tab H consists of unsworn emails solicited by Investigator Mourelatos. No witnesses were called to support the documents and allegations. The Appellant was not cross examined on the issues. There was no proof of who was the purchaser of the vehicles if not those named on the bills of sale.

[251] Investigator Mourelatos stated she could have taken her investigation one step further and searched the VIN numbers to find out who or what company ended up registering the cars but she would have had to ask for access to do so. Instead she limited her investigation to a search of business licenses and phone calls which initialized email responses thereby leaving the Board with doubt. A doubt serious enough to sway the balance of probability.

[252] The Director in his decision cites numerous retail sales having occurred. That was not the evidence before the Panel. Such facts cannot therefor influence this panel.

[253] There was evidence of one retail sale for Belal back in 2010 which resulted in a warning.

[254] One of the main issues to avoid in the conditions was advertising to sell to the public. No evidence was led of such a breach in this hearing. Therefore it is not an issue to influence the panel.

[255] The real breaches alleged, were retail sales involving the eight denied purchases. No satisfactory evidence has been provided as to the end purchaser if not the companies listed on the bills of sale.

[256] Belal stated in his evidence that he thought from his own phone calls to some of these companies that they had been lying to Investigator Mourelatos. She was an AMVIC investigator and they were frightened of getting in trouble themselves for wrongly buying. It is certainly a plausible argument for the purchasers. This is particularly so if you look at the business records provided by the director at tab G of exhibit D2. There is an AMVIC section that sets out the following:
“Respondent of a complaint or cases submitted as a complainant”

[257] There are quite a few listed complaints in many of the boxes. For example JJ Auto the subject of some evidence has a live complaint against it. (see page 79, Tab G of exhibit D2)

- [258] The Board unanimously concludes many of the issues that can lead to cancellation such as: mechanically unsound vehicles creating real danger, lack of cooperation of the respondent, lack of experience in the business world, being new to the business, failure to produce records or missing records are not present in this matter and consequently the cancellation does not appear fit the circumstances.
- [259] The variance order granted by this panel does not remove from AMVIC any of its power to protect the public under section 127 .The same conditions and the same Undertaking remain in place as were there when the licences were cancelled by the Director. And the additional costs for the investigation of \$1000 are fitting to be paid again in this decision .
- [260] The \$1000 expenses must be paid prior to reinstatement.
- [261] A suspension of nine months is considerable punishment for Belal; losing his career of 11 years, his ability to support his family and Double M Deals to grow as a business.
- [262] Belal brought the administrative hearing upon himself by his lack of due diligence.
- [263] When an auction environment is at play as in these facts, there is heightened speed, maybe carelessness and a very competitive market place. In such environment it is difficult to conclude that deliberate obfuscation is at work as Ms Hale suggested.
- [264] The Board finds a certain lack of due diligence on the part of Double M Deals and Belal in believing that familiarity of individuals and companies at the auction provides a safeguard against the need for further enquiry.
- [265] The Board recognizes competition can result in carelessness and some lack of due diligence but that does not equate to intentional breach.
- [266] A serious questions is raised in this case; that is how does a wholesale vendor protect himself and what should be expected of a vendor in his obligation to protect the consumer? Due diligence in the face of pressure to sell is clearly the answer.
- [267] The ability of AMViC to make such diligence productive might suggest the introduction of some form of pocket sized ID for wholesalers to carry and a website overhaul or online courses for the membership. The more skilled and competent a licensee, the more protected will be the consumer. All the protective tools of AMVIC do a really good job for the public.
- [268] The panel does not find it has evidence from which it can definitely know to whom the actual vehicles whose sales are put in doubt were sold. There was no examination of vin numbers to find out the actual purchasers ,if it is not those named on the bills of sale ,nor was there any effort to make such an enquiry. Only with such evidence could the panel have found such allegations of doctored sales documents and wrong names to be supported .Nor was there any cross examination of any depth on the issue.
- [269] The panels thoughts on personal ID for wholesale licencees may be impractical and not required but we lay it out there as it has arisen in this Decision.

[270] The Board is aware the Consumer Protection Act has one mission only, the protection of the public and we feel that this variation of the Decision will provide such protection in this case since the conditions and undertaking remain in place from 2011 and the additional payment of another \$1000 in a year of no license is a penalty indeed.

This is unanimous decision of the Appeal Board signed at Calgary;



Virginia May, Chairperson.

12/02/2018

date



William Klasky, Board member.

12/02/2018

date



J.B. Isaacs, Board member

12/02/2018

date

APPENDIX A

**IN THE MATTER OF AN APPEAL
BY DOUBLE M DEALS AND BELAL SALEM
PURSUANT TO 179(1) OF THE CONSUMER PROTECTION ACT**

Exhibit #	Description	Tabs	# of pages
D1	Binder of Jurisdictional documents and Directors decision	1 to 8	16
D2	Directors exhibits Binder	A to H	147
D3	Summary table of Non Auction sales		1