

HISHAM ALSABAILEH
OPERATING AS “SAM AUTO”
AND
ALBERTA MOTOR VEHICLE INDUSTRY COUNCIL

This appeal board decision was issued under s. 179 of the *Fair Trading Act* in response to an appeal by the named parties. As allowed by s. 16 of the Appeal Board Regulation, this appeal board decision is part of the public record.

For more information on the *Fair Trading Act*, business licensing in Alberta or to search for a licensed business, please click here:

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In The Matter of an Appeal
Pursuant to s.179(1) of the Fair Trading Act, RSA 2000, c. F-2

And In the Matter of the Decision on March 4, 2013 by
The Director of Fair Trading to Cancel an
Automotive Sale License for Retail Vehicle Sales

Between:

Hisham Alsabaileh operating as "Sam Auto"
("Mr. Alsabaileh")

- Appellant

-and-

Alberta Motor Vehicle Industry Council
("AMVIC")

- Respondent

Arbitration Panel: John Welbourn, chair
Al Briggs
Lyle Berge

Hearing: At 3rd Floor, 7015 Macleod Trail S., Calgary, Alberta, on Tuesday,
October 15, 2013.

Agent for the Appellant:

Emmerson Brando

Counsel for the Respondent:

Vivian Stevenson, Q.C.

DECISION

The Panel unanimously confirms the March 4, 2013 decision of the Director of Fair Trading to cancel the automotive sale license for retail vehicle sales issued to Hisham Alsabaileh operating as "Sam Auto".

Written reasons for this decision will follow.

Signed at Calgary, Alberta on October 18th, 2013.



John Welbourn, chair

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Agent for the Appellant:

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Counsel for the Respondent:

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REASONS

These reasons follow the decision of this Appeal Board issued October 18, 2013.

On October 16, 2013, the day following the appeal hearing, Ms. Stevenson requested permission to provide relevant and material information to the Appeal Board that had not been known to AMVIC prior to the appeal hearing. Mr. Brando opposed the request. The Appeal Board declines the request.

Jurisdiction and Preliminary Matters:

The chairman opened the hearing of Mr. Alsabaileh's appeal from the March 4, 2013 decision of the Director of Fair Trading cancelling his automotive sale license for retail vehicle sales. The chairman confirmed that each member of the Appeal Board had been

appointed on April 17, 2013 by the Deputy Minister, Service Alberta, pursuant to s.179 of the Fair Trading Act.

The Parties confirmed that:

1. The hearing room was satisfactory;
2. The proceedings would not be formally recorded;
3. Neither intended to call any witness to give evidence;
4. An Agreed Statement of Facts had been reached.

The chairman advised that the hearing was intended to proceed as a new trial. However, Mr. Brando confirmed that the facts admitted in the Agreed Statement of Facts were sanctionable, and that he would speak only to alternative sanctions for the Appeal Board to consider to replace or vary the Director's March 4, 2013 decision.

The Parties agreed that Mr. Brando would present his submissions, Ms. Stevenson would reply, and Mr. Brando would be permitted a final rebuttal.

Exhibits:

The following document was entered as an Exhibit by agreement of the Parties:

<u>Exhibit #</u>	<u>Document</u>
1	Agreed Statement of Facts.

Facts:

The facts are those stated in the Agreed Statement of Facts a copy of which is attached to these Reasons, and will not be repeated.

Submissions:

Mr. Alsabaileh appeals only the penalty of license cancellation ordered by the Director in his decision of March 4, 2013. He admits the facts stated in that decision and recited in the Agreed Statement of Facts. Mr. Alsabaileh pleads that the cancellation of his retail vehicle sales license was too severe a sanction.

Mr. Alsabaileh did not attend the appeal hearing. No evidence was put forward other than the facts in the Agreed Statement. There isn't any evidence of the Mr. Alsabaileh's background, other employment or business history, his current circumstances, or the

impact, if any, that the loss of his retail vehicle license has had since its cancellation.

Mr. Brando described Mr. Alsabaileh as rehabilitated, a changed man who has learned his lesson since the loss of his retail vehicle sale license six months ago. He asserts that his client now understands that he cannot disregard the authority and regulations which govern motor vehicle sales in Alberta. Mr. Brando believes him to be an honest man who was not evasive or untruthful with investigators. The loss of his retail vehicle sale license has deprived Mr. Alsabaileh of his livelihood and seriously impacted his ability to provide for his family.

Mr. Brando suggests that Mr. Alsabaileh deserves one final chance. He invites the Appeal Board to vary the Director's order. He proposes the Board order the license be reissued to Mr. Alsabaileh with reporting conditions that he must unerringly follow before he sells any vehicle to any person. Failure to comply with the reporting conditions would result in immediate and permanent cancellation of the license. Mr. Brando suggests that his office and AMVIC would oversee the Appellant's strict compliance with the reporting conditions.

AMVIC notes the Agreed Statement of Facts discloses 4 retail vehicle sales complaints against Mr. Alsabaileh during the 3 years prior to August, 2012. Following AMVIC's investigation into the second, he signed an Undertaking on May 3, 2012 acknowledging the violations and undertaking not to engage in improper sales practices in the future. AMVIC received the third complaint on May 7, 2012 and the fourth on August 7, 2012. AMVIC contends that Mr. Alsabaileh's conduct confirms that he cannot be trusted and is not deserving of any further consideration.

Further, AMVIC does not have the resources to undertake the scale of monitoring suggested by Mr. Brando and is not prepared to do so. In short, Mr. Alsabaileh has had several opportunities to comply with the regulations governing motor vehicle sales in Alberta. On each occasion the Appellant has failed to do so and should not have his retail vehicle sale license reinstated.

Findings:

The Panel does not have any comfort that the Appellant would fully and properly comply with any conditions if his retail vehicle sale license was ordered reinstated on any terms. His history of disregard for the regulations is proved and admitted. Particular violations are serious - failure to disclose a vehicle's accident history - failure to mechanically certify the roadworthiness of a previously "written off" vehicle. These confirm a deliberate disregard for the safety of the consumers purchasing these vehicles, and the safety of all people in and in the vicinity of those vehicles.

Mr. Alsabaileh's breach of his May 3, 2012 Undertaking speaks strongly against his

reliability and trustworthiness. He did not attend the hearing which did not assist the Appeal Board's assessment of the matter.

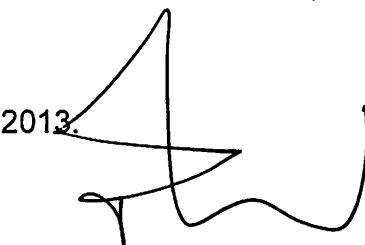
AMVIC confirmed that Mr. Alsabaileh still able to sell vehicles for a dealership. If he derives his livelihood through motor vehicle sales, he has not lost that source of income. The Board also notes that he is not precluded from reapplying for a retail vehicle sales license in the future.

The Appeal Board does not have the jurisdiction to grant any authority to Mr. Brando or his office to oversee or supervise Mr. Alsabaileh as is suggested. AMVIC asserts that it does not have the resources to closely monitor Mr. Alsabaileh, and the Board will not require AMVIC to do so.

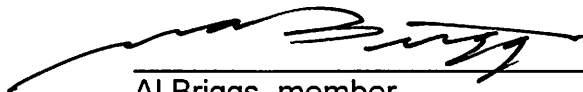
Decision:

Mr. Alsabaileh's appeal is dismissed.

Signed at Calgary, Alberta, on November ____, 2013.



John Welbourn, chair



Al Briggs, member



Lyle Berge, member

IN THE MATTER OF AN APPEAL BY HISHAM ALSABAILEH O/A SAM AUTO
PURSUANT TO SECTION 179(1) OF THE FAIR TRADING ACT, BEING CHAPTER F2
of the REVISED STATUTES OF ALBERTA, 2000

EX 1
October 15
2013

AND

IN THE MATTER OF THE DECISION BY THE ALBERTA MOTOR VEHICLE
INDUSTRY COUNCIL TO REFUSE AN AUTOMOTIVE BUSINESS LICENCE UNDER
THE FAIR TRADING ACT ON MARCH 27th, 2013

AGREED STATEMENT OF FACTS

The Alberta Motor Vehicle Industry Council ("AMVIC") and Hisham Alsabaileh agree to the following facts for the purposes of this appeal:

1. On July 14th, 2009 AMVIC issued a license to Hisham Alsabaileh doing business as Sam Auto (the "Appellant") for automotive sales on a wholesale basis. The wholesale license was renewed in 2010 and 2011. Copies of the wholesale licenses are attached at Tab 1.
2. There was no "premise" associated with the Appellant's wholesale license as sales are to take place from Automotive Business to Automotive Business. The Appellant's mailing address is listed as 166 Tuscarora Close, in Calgary. A copy of the home occupation permit from the City of Calgary is attached at Tab 2.
3. "Wholesaler" is defined in s. 1 (1)(l) of the *Automotive Business Regulation* as "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."
4. The Appellant specializes almost exclusively in buying salvage vehicles from auctions such as Impact Auto Actions. The vehicles sold at these auctions have been involved in serious accidents and are determined by insurance companies to be too costly to repair. They are not considered roadworthy until they have been properly repaired and have been inspected by a licensed inspection facility.
5. AMVIC began receiving complaints about the Appellant selling vehicles from his home at 166 Tuscarora Close in 2009. One complaint (#209825) was filed against the Appellant by a neighbour. The neighbour indicated to AMVIC that the Appellant was storing and selling cars from his home and that this activity had been taking place for a long time.

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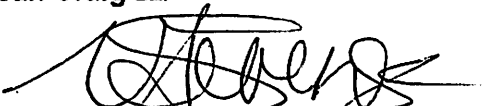
6. The Appellant advised the AMVIC investigator looking into complaint #209825 that he did not sell automobiles from his home or anywhere else and that the complainant just did not like him as a neighbour.
7. In 2011 the Appellant submitted a renewal for his license which indicated that he wished to add retail sales to his license. AMVIC advised the Appellant of the requirement for municipal approval from the City of Calgary for retail sales. As a result of these communications, the Appellant signed a document on August 11th, 2011 confirming that Sam Auto did not sell vehicles owned by that company directly to a member of the general public and requesting that his application/renewal reflect non-retail sales. The August 11th, 2011 document is attached at **Tab 3**.
8. On January 16th, 2012, an AMVIC investigator met with the Appellant regarding another complaint about the Appellant selling vehicles from his home (#213549). The Appellant admitted to the Investigator that he had been selling vehicles directly to consumers (retail sales) for approximately 6-8 months while he had only been licensed to sell wholesale. He advised the Investigator that he now had a retail location and would apply for a retail license.
9. On January 18th, 2012 the Appellant was granted a Retail License. A copy of the Retail License is attached at **Tab 4**. The retail license was related to a lot at 3360 26 St. NE Calgary. Between April 1st, 2012 and May 29th, 2012 the Appellant made retail sales from an unlicensed car lot at 323 36 Ave. SE, contrary to the provisions of the *Fair Trading Act*.
10. During the investigation into complaint #213549 the Appellant admitted using an unlicensed technician for repairs to vehicles and failing to advise consumers that vehicles had been in accidents or how serious the accidents were.
11. As a result of the investigation into complaint #213549 the Appellant entered into an undertaking with AMVIC dated May 3rd, 2012. A copy of the undertaking is attached at **Tab 5**. In the undertaking the Appellant acknowledged that he had failed to comply with the provisions of the *Fair Trading Act* and undertook not to engage in retail sales while only authorized to sell wholesale and not to engage in any acts or practices contrary to s. 3(7) of the *Automotive Business Regulations*.
12. On May 7th, 2012 AMVIC received a complaint (#213930) regarding the Appellant selling a vehicle that was a write-off and had been repaired without disclosing that information to the buyer. The Appellant did not advise the complainant that the car had been written off, did not provide any documentation to the buyer regarding the history of the vehicle and did not complete a Mechanical Fitness Assessment for the vehicle.
13. On August 7th, 2012 AMVIC received another complaint about the Appellant selling vehicles from his home (#214225).

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14. In the course of investigating complaint #214225, an AMVIC Investigator contacted the Appellant regarding a vehicle in a Kijiji ad posing as a consumer and advised that he could not reach the Appellant's shop before it closed. The Appellant then offered to meet the Investigator at the Appellant's home after hours and advised that the sale could then be private and GST eliminated. The Appellant eventually asked the Investigator to meet him at a location other than his business address and home address and showed the Investigator the vehicle at that location. Selling vehicles from an unlicensed lot is a violation of s. 104 of the *Fair Trading Act*.
15. During the investigation into complaint #214225 the Appellant initially denied that he was selling vehicles from his home, but then admitted to the Investigator that he had done so, saying that he had called the City of Calgary to confirm that he could sell cars from his home. City of Calgary policy does not allow the business of selling cars from a residential address.
16. The Appellant had not been providing a Mechanical Fitness Assessment to his customers at the time of vehicle sales as he was of the view that a Salvage vehicle inspection was good enough. The Appellant admitted to investigators that on at least one occasion the Appellant had been directed by the Ministry of Transportation to repair an accident vehicle that he had sold to a customer because it did not meet inspection standards.
17. The Appellant sold a number of vehicles using Bills of Sale that he had filled out and upon which he had written "Sold As Is". A number of the Bills of Sale originated from his home address rather than the business address.
18. At the hearing before the Director, when the Appellant was questioned about his responsibility as a business owner with respect to the mechanical condition and safety of the vehicles he sells, his response was "I am just a salesman". The Appellant made this comment more than once during the hearing.

Duncan Craig LLP

Per:


Vivian R. Stevenson
Counsel for AMVIC


Hisham Alsabaileh