APPEAL BOARD DECISION

IN THE MATTER OF APPEAL OF THE DECISION OF THE ALBERTA MOTOR VEHICLE INDUSTRY COUNCIL TO REFUSE TO ISSUE AN AUTOMOTIVE BUSINESS LICENCE UNDER THE FAIR TRADING ACT AND THE AUTOMOTIVE BUSINESS REGULATION

TO

ALBERTA VEHICLE LIQUIDATION CENTER LTD.

(APPELLANT)

AND

ALBERTA MOTOR VEHICLE INDUSTRY COUNCIL (DIRECTOR OF FAIR TRADING (AS DELEGATED))

(RESPONDENT)

Background

1. Alberta Motor Vehicle Industry Council through its Director of Fair Trading (as delegated) made a decision under Section 127 of the Fair Trading Act (Alberta) (the "Act") on March 16, 2012, with respect to an application for an automotive business licence, dated November 17, 2011, by Alberta Vehicle Liquidation Center Ltd. as follows:

> "It is my decision, as Director of the Fair Trading Act (as delegated) to refuse the automotive business licence of the Alberta Vehicle Liquidation Center Ltd. for the following reasons:
>
> a. The business was previously refused on September 11, 2011, based on criminal activity.
>
> b. AVLC continues to advertise vehicles for sale when unlicensed to do so, despite clear knowledge that the automotive business licence is required and the previous licence refusal.
>
> c. There is no evidence to prove the business practices have changed with the business operation other than the removal of Mr. Jesse Wong as a Director. This in of itself does not prove discontinued association.
>
> d. The business plan as proposed at the March 6, 2012 meeting causes concern that the business will have the ability to remain a viable company.
>
> e. Mr. Nguyen is still on probation for a crime he was convicted of in May 2011, which stems from activities of this very business.

f. Alberta Vehicle Liquidation Center Ltd. is not authorized to engage in activities of buying and selling vehicles in the automotive industry in Alberta."

(Note: sub paragraph lettering (a), (b), (c), (d), (e) and (f) added)

2. By letter received by facsimile dated April 13, 2012, the Appellant appealed the decision of the Director referred to in paragraph 1 above.

3. By appointment dated 6th day of May, 2012, the Deputy Minister of Service Alberta appointed an Appeal Board of Mr. Ron Dutchak QC, Mrs. Hilda Lupul and Mr. Wade Riordan Raaflaub to hear the appeal and to provide a written decision within 45 days after the conclusion of the hearing.

4. Alberta Motor Vehicle Industry Council (AMVIC) and counsel for the Appellant submitted to the Appeal Board one binder having a copy of documents to be relied on by AMVIC and the Appellant.

5. A hearing was held before the Appeal Board on August 3, 2012 at which the Appellant through its owner Nhat Nguyen gave evidence on behalf of the Appellant. The Appellant's witness was cross-examined by the Respondent through Mr. Murray Savage, Investigator. The Respondent's evidence was presented through Detective Alf Normand of the Edmonton Police Service who was cross-examined by counsel for the Appellant. The witnesses gave evidence under oath.

6. At the end of the hearing on August 3, 2012, the Appeal Board directed written arguments to be submitted to the Appeal Board by the Appellant and AMVIC on or before August 30, 2012. In accordance with that direction, written arguments were received by the Appeal Board on August 30, 2012.

7. It is common ground by the Appellant and Respondent that this Appeal is being heard pursuant to Section 179 of the Fair Trading Act. Section 179(6) provides: "an Appeal Board that hears an appeal pursuant to this section may confirm, vary or quash the decision or order that is being appealed." Section 179(8) of the Act provides: "an appeal under this section is a new trial of the issues that resulted in the decision or order being appealed".

8. The Appellant acknowledged that after its licence was refused in September 2011, it continued to advertise on Kijiji (Internet) which included advertisements through March 2012. The Appellant's explanation was that he stopped paying for the advertising on Kijiji in January 2012 but was using the advertising in order to solicit persons requiring financing on vehicles for his then employer, Kingsway Toyota. The Appellant acknowledged that it did not have a business licence in which to sell the vehicles advertised and that the vehicles advertised for sale, in fact, were not owned by the Appellant.

9. Mr. Nhat Nguyen acknowledged being sole owner and director of Alberta Vehicle Liquidation Center Ltd. since November 2011 and that he pled guilty to a criminal charge of fraudulent concealment of a vehicle on March 25, 2011 and as part of his sentence was given a conditional discharge with conditions which expired March 25, 2012. The Criminal Records Act provides that a person given a conditional discharge will have his

conviction record removed after three years have elapsed since they were discharged on the conditions prescribed in the probation order.

10. Mr. Nhat Nguyen further acknowledged that he signed a false bill of sale for a Porsche vehicle. In his defense the Appellant advised that he signed the bill of sale, which was presented by his business partner Jesse Wong, with assurances that things were in order when they were not. The Appellant learned that the contents of the bill of sale were fraudulent and intended to mislead the public later.

11. The Appellant acknowledged that it received a motor vehicle on consignment which vehicle was later destroyed by fire while in its possession for sale. Mr. Nhat Nguyen acknowledged that the Appellant's business licence issued on June 8, 2009 contained a limitation whereby it could not sell vehicles on consignment. The Appellant's explanation was that he had forgotten that limitation.

12. In the Respondent's written argument, he points out that all business operators must comply with the general code of conduct which includes complying with Section 6 of the Fair Trading Act which includes the representation under sub-section 6(4)(a) that make it a condition that suppliers are prohibited from doing or saying anything that might reasonably deceive or mislead a consumer.

Decision of the Appeal Board

It is the decision of the Appeal Board to confirm the decision of the Director of Fair Trading Act (as delegated) to refuse an automotive business licence for Alberta Motor Vehicle Liquidation Center Ltd.

Reasons for Decision

a. The principal of the Appellant being Mr. Nhat Nguyen pled guilty to a criminal offence of fraudulent concealment contrary to the Criminal Code and while was given a conditional discharge and will retain a criminal record for up to three years after his discharge. This conviction directly relates to the business which he has been seeking to operate and carrying on involving the public.

b. The Appellant's continuing to advertise vehicles after it ceased to be licensed to do so, involving vehicles which it did not own, is an attempt by the Appellant to deceive or mislead the consumer that a vehicle for sale could be financed. In fact the Appellant was attempting to advertise its financing ability to people with poor credit ratings in the hope of entering into a financial arrangement for the purchase of something entirely different than what was advertised.

c. Mr. Nhat Nguyen, owner of the Appellant, signed a bill of sale under circumstances which he knew or ought to have known were not correct and as a business licensed owner had an elevated duty to the public to ensure that contents of bills of sale and like documents contain accurate and complete information.

d. As a business licensed owner, it is imperative that the operator know the limits on which they may conduct business. The taking of a vehicle on consignment is contrary to

the conditions under which the Appellant had a business licence and by doing so contravened conditions of his licence.

It is the Appeal Board's view that any one of the above reason taken alone may not justify the Director of Fair Trading (as delegated) exercising her discretion that it is not in the public's best interest to issue a business licence for selling motor vehicles. However, having regard to the cumulative effect of circumstances under which the Appellant contravened the provisions of the Fair Trading Act and the limitations of the licence it held, the Appeal Board is of the view it is not best interests for the public for the Appellant to hold a licence at this time. The Appellant must, in our view, demonstrate the ability to understand and comply with all of the provisions of the Fair Trading Act and conditions of its licence so as to provide ethical and responsible leadership to its employees in conduct of its business to ensure fair trading practices are followed.

DATED this 19 day of September, 2012.

Ronald W. Dutchak, QC
Chair

Mrs. Hilda Lupul

Wade Riodran Raaflaub