

IN THE MATTER OF AN APPEAL
BY HISHAM ALSABAILEH OPERATING AS "SAM AUTO"
PURSUANT TO SECTION 179(1) OF THE *FAIR TRADING ACT*,
BEING CHAPTER F-2 OF THE REVISED STATUTES OF ALBERTA, 2000,

AND IN THE MATTER OF THE DECISION ON MARCH 4, 2013
BY THE ALBERTA MOTOR VEHICLE INDUSTRY COUNCIL
TO CANCEL AN AUTOMOTIVE SALE LICENCE
FOR RETAIL VEHICLE SALES
UNDER THE *FAIR TRADING ACT*,

Between:

HISHAM ALSABAILEH operating as "SAM AUTO"
("Mr. Alsabaileh")

-and-

ALBERTA MOTOR VEHICLE INDUSTRY COUNCIL
("AMVIC")

DECISION ON APPLICATION FOR STAY

By decision dated March 4, 2013, AMVIC cancelled Mr. Alsabaileh's automotive sale licence for retail vehicle sales effective March 31, 2013 (the "Decision"). Mr. Alsabaileh has appealed the Decision pursuant to s.179(1) of the *Fair Trading Act* (the "Act") and applied to the chair of the appeal board pursuant to s.180(2) of the Act, to stay the Decision until the appeal board renders its decision on the appeal.

In a conference call at 3:00 p.m. on Friday, May 3, 2013, the chair of the appeal board heard Mr. Alsabaileh's application for a stay of the Decision. Attending on the conference call were Messrs. Emmerson Brando and John Bachinski. Mr. Brando is a paralegal and Mr. Alsabaileh's agent. Mr. Bachinski is the designated Director of Fair Trading who issued the Decision.

In Mr. Brando's submission a stay of the Decision is appropriate because:

1. Mr. Alsabaileh is not a danger to the community. Nobody has been killed or injured by a vehicle sold by Mr. Alsabaileh;
2. If Mr. Alsabaileh's appeal is successful and the stay is not granted, both his business and reputation will suffer greatly.

Mr. Brando suggests that if a stay is granted, stringent conditions should be imposed on Mr. Alsabaileh to report to AMVIC upon purchasing any vehicle and obtain approval from AMVIC before selling any vehicle. This would include full disclosure of the motor vehicle's details, damage and repairs, and ensure that AMVIC was fully informed of Mr. Alsabaileh's inventory and sales activities.

Mr. Bachinski submits that public safety is a concern. Among the reasons for the Decision were that Mr. Alsabaileh had:

1. Sold a motor vehicle to a buyer without disclosing that the vehicle was a "write off" and had been repaired. Further, Mr. Alsabaileh did not complete a Mechanical Fitness Assessment of the vehicle as required;
2. Used an unlicensed technician to repair vehicles and failed to advise buyers that vehicles had been in accidents and the severity of the damage to the vehicles;
3. Been required by the Ministry of Transportation to buy back a vehicle for which repairs had not been properly completed.

Mr. Bachinski further submits that Mr. Alsabaileh has a demonstrated history of failing to comply with specific requirements of the Act, as reflected above, and by:

1. Retail selling of vehicles without required licensing;
2. Selling vehicles "as is" in contravention of s.2(1) of the Act;
3. Selling vehicles from a location other than his licensed business location.

In addition, on May 3, 2012, following an investigation into a complaint, Mr. Alsabaileh had signed an undertaking acknowledging that he had not been complying and committed to fully comply with the Act. Mr. Bachinski questions if Mr. Alsabaileh would comply with conditions ordered in a stay of the Decision. Further, AMVIC does not have the personnel or procedures in place to monitor any type of reporting and disclosure as suggested by Mr. Brando.

The physical safety of the public is the paramount concern. Mr. Alsabaileh has demonstrated a lack of concern for that safety by:

1. Selling a vehicle that had not been properly repaired;
2. Using an unlicensed technician to repair vehicles;
3. Failing to obtain Mechanical Fitness Certifications of vehicles he had

repaired and sold;

4. Failing to advise purchasers that vehicles had been in accidents and the resulting damages to those vehicles.

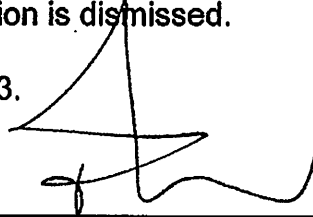
These are not insignificant, administrative oversights. These are legislated requirements intended to provide a level of assurance and protection to the people who buy these repaired vehicles. By failing to comply with the legislation, Mr. Alsabaileh has put purchasers at risk. That there hasn't been any death or injury suffered by any person does not demonstrate that Mr. Alsabaileh is not a danger to the public. His actions or inactions constitute an unacceptable risk to the public. The concern is increased by Mr. Alsabaileh's failure to abide by his written undertaking to comply with the Act.

I am not satisfied that imposing conditions of the type suggested by Mr. Brando, would be effective or sufficient. This is particularly so in view of AMVIC's representation that it does not have any mechanism for monitoring adherence.

Finally, protection of the public must supercede concerns about Mr. Alsabaileh's business or reputation.

Mr. Alsabaileh's application for a stay of the Decision is dismissed.

Dated at Calgary, Alberta, this 6th day of May, 2013.



John H. Welbourn,
Appeal Board Chair