

IN THE MATTER OF

THE CONSUMER PROTECTION AND BUSINESS PRACTICES ACT, SS 2013, c C-30.2

AND

Jack Mally Motors Ltd. (Jack Mally Chrysler Dodge Jeep Ram)

DECISION AND DEMAND FOR FORFEITURE OF FINANCIAL SECURITY

Introduction

1. This is a Demand for Forfeiture of Financial Security ("Demand") made in respect to the financial security filed by Jack Mally Motors Ltd. o/a Jack Mally Chrysler Dodge Jeep Ram ("Jack Mally Motors") in the amount of \$25,000 pursuant to section 59 of *The Consumer Protection and Business Practices Act, SS 2013, c C-30.2* ("Act").

2. Subsection 5-1(2)(d)(i) of *The Consumer Protection and Business Practices Regulations, RRS c C-30.2, Reg 1* ("Regulations") gives authority to the director to demand that financial security in the form of a bond filed pursuant to section 59 of the Act be forfeited to the Crown in right of Saskatchewan if the director renders a written decision "stating in effect that, after consideration and investigation of a complaint, the director is satisfied that the person with respect to whose conduct the bond is conditioned, or any agent or representative of that person", has contravened any provision of the Act or Regulations.

3. The Deputy Director appointed pursuant to subsection 77(1) of the Act may exercise the powers and responsibilities of the director under the Act and Regulations. (ss 2-1 and 2-36 of *The Legislation Act SS 2019, c-L10.2*).

4. An investigation was conducted in respect to a complaint that Jack Mally Motors made material misstatements about a replacement engine and that they failed to disclose pertinent information that may have influenced the consumers' decision to buy or not to buy a particular vehicle.

5. For the reasons below, which are based on the information in the Disclosure Materials, the Notice of Proposed Demand for Forfeiture of Financial Security ("Proposed Notice of Forfeiture"),

and the written responses, I am satisfied, in my capacity as Deputy Director, that Jack Mally Motors contravened various sections of the Act and Regulations in its dealings with [REDACTED]

6. In this decision, I am not deciding how money realized from the bond will be paid pursuant to subsection 5-1(6) of the Regulations. Instead, my concern is whether Jack Mally Motors contravened the Act or the Regulations such that I have the authority to demand that its bond be forfeited.

7. Before making a decision, I provided Industrial Alliance Pacific General Insurance Corporation ("Industrial Alliance" or "Surety") and Jason Newberry, Director, Jack Mally Motors with a Proposed Notice of Forfeiture along with the Disclosure Materials. I also provided Industrial Alliance and Jason Newberry with an opportunity to make written submissions with respect to whether I should demand forfeiture of Jack Mally Motors's bond. I received a written response from J. Paul Warner, Senior Litigation Counsel on behalf of Industrial Alliance. Jason Newberry did not submit a response.

8. Industrial Alliance responded to the Proposed Notice of Forfeiture and Disclosure Materials on October 6, 2021. Industrial Alliance stated in its response that "We have reviewed your proposed demand and have no substantive submissions in that regard." They further stated "We acknowledge that the Consumer Protection and Business Practices Regulations contemplates forfeiture of the entire bond by the Director in the appropriate circumstances. However, we request that if you are in a position to determine precisely how much money you require to properly compensate [REDACTED], inclusive of your expenditures, that you demand forfeiture of that amount only (subject, of course, to the amount of the bond)."

Background

9. A penal bond with policy number 1680 that was dated effective July 1, 2016 ("Penal Bond") was provided to the then Registrar of Motor Vehicles in the amount of \$25,000 as a condition of Jack Mally Motors's licence application as a motor dealer under *The Motor Dealers Act*. Notwithstanding the enactment of the Act and repeal of *The Motor Dealers Act*, the obligations under the Penal Bond remain in effect and is continued and may be enforced and

otherwise dealt with pursuant to the Act as if the requirement or obligation or right had been imposed, acquired, accrues, incurred, undertaken or made pursuant to the Act.

123(1) In this section, "**former Acts**" means:

- (a) the Acts mentioned in sections 114 to 120 as they existed before the coming into force of each of those sections; and
 - (b) Parts III and IV of *The Cemeteries Act, 1999* as those Parts existed before the coming into force of subsection 121(2).
- (2) Every investigation and action commenced pursuant to any of the former Acts is continued and is to be conducted in conformity with this Act as far as is consistent with this Act.
- (3) Every requirement or obligation pursuant to any of the former Acts respecting any practice or activity, and every right, remedy or warranty given or implied, pursuant to any of the former Acts that must be done, exercised or fulfilled over a period:
- (a) remains in effect and is continued; and
 - (b) may be enforced and otherwise dealt with pursuant to this Act as if the requirement or obligation or right, remedy or warranty had been imposed, acquired, accrued, incurred, undertaken or made pursuant to this Act.

10. Jack Mally Motors held a licence as a dealer under the Act and Regulations until June 3, 2019. Jack Mally Motors was authorized under its licence to carry on the business of a dealership selling vehicles.

11. Jack Mally Motors was also a supplier who carried on the business of selling goods and services on a retail basis under subsection 2(j) of the Act.

12. Jack Mally Motors carried on business as a supplier and a licensed vehicle dealer with respect to its dealings with consumers.

13. Consumers are individuals who participate in transactions with suppliers involving goods and services ordinarily used or provided for personal, family or household purposes. (Act, ss 2(b), 2(e) and 2(h)) Consumers are also persons who buy, lease, or otherwise acquire a vehicle from a licensed dealer. (Regulations, s 5-7(d))

14. [REDACTED] is a consumer for the purposes of the provisions of the Act and the vehicle dealer provisions in the Act and Regulations.

15. Industrial Alliance's representative issued a Notice of Cancellation of Bond 1680 dated November 30, 2019.

16. According to the terms of the Penal Bond, the obligation to pay the proceeds of the bond to Her Majesty the Queen in right of Saskatchewan is subject to forfeiture under the provisions of the former *Motor Dealers Act* and, for the reasons mentioned previously, now the Act.

"NOW THE CONDITION of the above obligation is such that if the said obligation does not by reason of any act, matter or thing at any time hereafter become or be forfeit under the Motor Dealers Act, then the said obligation shall be void, but otherwise shall be and remain in full force and effect and shall be subject to forfeiture as provided by the said Act."

17. Any obligation under the bond shall cease and determine twenty-seven calendar months after the then registrar, now the director, received notice in writing of the Surety's intention to terminate the obligation. The terms specifically state the following:

"PROVIDED that if the Principal or Surety at any time gives notice in writing to the Registrar of The Motor Dealers Act of intention to terminate the obligation hereby undertaken then this obligation shall cease and determine in respect only of any act, matter or thing taking place, arising or done subsequent to twenty-seven calendar months after receipt by the Registrar of such notice."

18. The terms of the bond are clear that a claim under the bond with respect to any act, matter or thing taking place needs to be made before the expiration of the 27 calendar months after the receipt of notice of intention to terminate.

"PROVIDED FURTHER that if such notice has been given, any claim hereunder shall be made on the Surety before the expiration of the aforesaid twenty-seven months."

19. In addition, the terms state that no proceeds of the bond are to be paid with respect to contracts entered into 3 calendar months or more after the receipt of the notice.

"AND PROVIDED FURTHER that no proceeds of this bond shall be paid to any person in respect of a contract entered three calendar months or more after receipt by the Registrar of any such notice."

20. My Demand is made under the Act and Regulations based on contraventions of the Act and Regulations by Jack Mally Motors with respect to its dealings with [REDACTED] on matters that arose before February 28, 2020 and with respect to contracts entered into before February 28, 2020.

21. The date stamp on the notice of cancellation of bond in the disclosure materials shows the notice was received by the Financial and Consumer Affairs Authority. The date stamp on the Penal Bond in the Disclosure Materials is faded and doesn't reveal a specific date. Assuming the notice of cancellation was received the same day it was issued, the obligation would cease and determine at the earliest 27 calendar months later, on or about February 28, 2022. This Demand is being made within the 27-month timeline. The obligations under the bond continued and continue to this day.

22. Accordingly, it is my view that I have authority under the terms of the bond filed by Jack Mally Motors to demand forfeiture of the financial security for a contravention of the Act and Regulations.

Issues

23. Industrial Alliance acknowledged that I have the authority to demand the Penal Bond in its entirety "in the appropriate circumstances". However, Industrial Alliance also requested that I demand forfeiture of an amount required to properly compensate [REDACTED] plus the director's expenses. It's not clear whether Industrial Alliance is taking the position that the director can't demand the full amount of the bond (penal amount) or requesting the director not demand the penal amount.

24. With this in mind, I will address the following issues in this decision:
- a. Do I have the authority to demand forfeiture of the security filed by Jack Mally Motors in the penal amount even though the estimated amount of the consumer's claims plus the director's expenses are less than the penal amount?
 - b. Did Jack Mally Motors contravene the Act or the Regulations in its dealings with the consumer such that a demand for forfeiture of security can be made?

Analysis

Can I Demand Forfeiture of Security in the Full Penal Amount?

25. In my view, the director's demand for forfeiture of the bond is not limited to the estimated amount of claim and the director's expenses.

26. The bond presented by Jack Mally Motors is to be construed as a penal bond payable to the Crown notwithstanding the Crown has suffered no loss or damage. The Regulations provide as follows:

Forfeiture of financial security

5-1(1) Notwithstanding that the Crown in right of Saskatchewan has not suffered any loss or damage:

- (a) every bond filed with the director pursuant to the Act must be construed as being a penal bond; and
- (b) if any bond is forfeited pursuant to this section, the amount due and owing as a debt to the Crown in right of Saskatchewan by the person bound by the bond must be determined as if the Crown had suffered a loss or damage that would entitle the Crown to be indemnified to the maximum amount of liability set out in the bond.

27. The Surety's obligation to pay the penal amount is not limited to the estimated payment of loss or damage occasioned by a breach of the obligation. It is payable in the full amount.

28. Mr. Justice Noble explained a bond surety's liabilities in *SMDA Insurance Corp v Manning Mercury Sales Ltd*, [1995] SJ No 766. In that case, the deputy registrar demanded forfeiture of a bond due to the principal's bankruptcy. The court noted the surety's liability to pay the bond arises because of the statutory provision for forfeiture under *The Motor Dealers Act* R.S.S. 1978, c. M-22. The surety is required to pay upon demand, notwithstanding the merits of underlying claims and not hold back payment until claims are adjudicated.

"The Acting Deputy Registrar of the Act, in his letter demanding payment by the plaintiff, did state that a claim arising from the sale of the vehicle had been made against the bond. However, he demanded payment by virtue of the statutory forfeiture of the bond set out above. The liability of the plaintiff is determined not by the validity of a claim made against the bond posted by the defendant but instead by the statutory provision. The plaintiff, as surety under the bond, has no right to question the validity of the claim made against the bond and no right to withhold payment until the adjudication of that claim. The plaintiff is required to pay upon demand, irrespective of the merits of the claim." (Para 14)

29. In this case I am demanding forfeiture of the Penal Bond because of the breach of the provisions of the Act and the Regulations. The surety's liability to pay the penal amount arises because of the provisions for forfeiture in section 5-1(2)(d) of the Regulations:

(2) "Subject to subsection (3), every bond filed pursuant to section 59 of the Act is forfeited on the demand of the director if:

(d) a decision has been rendered by the director, in writing, stating in effect that, after consideration and investigation of a complaint, the director is satisfied that the person with respect to whose conduct the bond is conditioned, or any agent or representative of that person:

(i) has contravened any provision of the Act or these regulations or has failed to comply with any of the terms, conditions or restrictions to which the person's licence is subject;

30. The bond terms also specify that the bond is subject to forfeiture as provided for in *The Motor Dealers Act*, now the Act.

"NOW THE CONDITION of the above obligation is such that if the said obligation does not by reason of any act, matter or thing at any time hereafter become or be forfeit under the Motor Dealers Act, then the said obligation shall be void, but otherwise shall be and remain in full force and effect and shall be subject to forfeiture as provided by the said Act."

31. I find that I have the authority to demand the full penal amount of the bond under the Act, Regulations and terms of the bond provided Jack Mally Motors has contravened the Act or the Regulations. The Surety's obligation is to pay the full amount.

32. Industrial Alliance requested I demand forfeiture of the bond in the amount of [REDACTED] [REDACTED] claims plus the director's expenses. I am not in a position to determine the amount of valid claims under the Regulations at this stage.

33. Following receipt of the bond proceeds, the public will be advised that Jack Mally Motors's financial security has been demanded and was forfeited. The public will be provided with information on how claims may be submitted for determination. In this case, I intend to write a notice of proposed decision to the claimants and the Surety in which either party can make written representations. This is Industrial Alliance's opportunity to be heard with respect to any additional claims that were not included in this decision. Written representations will be considered, and a decision with respect to the claims will be rendered. I will then determine how to pay the bond proceeds under s 5-1(6) of the Regulations. Any surplus money not paid must be returned to Industrial Alliance, not retained by the Crown as required by section 5-1(7) of the Regulations.

(6) The director may pay any money realized pursuant to a bond or letter of credit to any of the following on any conditions the director considers appropriate:

- (a) the local registrar of the court for any persons that may become judgement creditors of the licensee named in the bond or the letter of credit, as the case may be, for claims relating to the activities of the licensee for which the license has been granted;
- (b) any trustee, custodian, interim receiver, receiver or liquidator of the licensee named in the bond or the letter of credit, as the case may be;
- (c) any person that the director considers entitled to the money for a claim arising out of an action of the licensee relating to the activities of the licensee for which the licence has been granted.

(7) "The director shall pay any money not paid pursuant to subsection (6) to the following after the payment of any expenditures incurred by the director in connection with the realization on the financial security and the determination and settlement of valid claims:

- a. in the case of a bond, to the surety or obligor under the bond;
- b. in the case of a letter of credit, to the obligor under the letter of credit.

34. It is appropriate to demand the full penal amount even though the penal amount exceeded [REDACTED] claim plus the director's estimated expenses. The Surety's obligation to pay the penal amount is not limited to the estimated payment of loss or damage occasioned by a contravention of the Act and Regulations. It is payable in the full amount. Secondly, I am not able to determine the how to pay the bond proceeds or to determine the extend of valid claims at this stage.

Did Jack Mally Motors Contravene the Act or Regulations?

35. As I will explain, I believe Jack Mally Motors committed an unfair practice contrary to the Act and contravened the material fact disclosure requirements of the Regulations. The relevant provisions are laid out below.

36. The unfair practices provisions are found in Part II, Division 2 of the Act.

37. Section 6 of the Act broadly sets out various things that can constitute an unfair practice committed by a supplier. The provision reads:

6 It is an unfair practice for a supplier, in a transaction or proposed transaction involving goods or services, to:

(a) do or say anything, or fail to do or say anything, if as a result a consumer might reasonably be deceived or misled;

(b) make a false claim;

....

(d) without limiting the generality of clauses (a) to (c), do anything mentioned in section 7.

38. Section 7 provides further illustrations of unfair practices.

7. The following are unfair practices:

(e) representing that goods have been used to an extent different from the fact or that they have a particular history or use if the supplier knows it is not so;

39. Subsections 8(1) and (2) prohibit suppliers and any employee, agent, salesperson, or representative of the supplier from committing unfair practices. Subsection 8(4) states that the general impression given by the unfair practice is to be considered when deciding whether an unfair practice has occurred. In addition, subsection 8(5) states that when deciding if a person committed an unfair practice, the decision-maker must consider the reasonableness of the person's actions.

Unfair practices prohibited

8(1) No supplier shall commit an unfair practice.

(2) No employee, agent, salesperson or representative of the supplier shall commit an unfair practice.

(3) A supplier and the supplier's employee, agent, salesperson or representative are liable for an unfair practice of the employee, agent, salesperson or representative.

(4) In determining whether or not a person has committed an unfair practice, the general impression given by the alleged unfair practice may be considered

(5) In determining whether or not a person has committed an unfair practice, the reasonableness of the actions of that person in those circumstances is to be considered

40. An unfair practice can occur at any time, either before, during, or after a transaction involving goods or services.

9(1) An unfair practice may occur before, during or after a transaction involving goods or services or whether or not a transaction involving goods or services takes place.

(2) An unfair practice may consist of a single act or omission.

41. The Regulations require the dealer to disclose material facts before a sale is entered into.

5-22(1) In this section, "material fact" means information that is known to the dealer or that the dealer should reasonably be expected to know that could reasonably be expected to

influence a reasonable consumer's decision to buy or lease, or refuse to buy or lease, a vehicle from the dealer...

(2) Every dealer must disclose in writing the following to the prospective purchaser or lessee before the contract of sale or lease is entered into by the purchaser or lessee:

(a) all material facts, as known by the dealer or that the dealer should reasonably be expected to know at the time the vehicle contract is entered into;

42. Jack Mally Motors's representation as to the extent of the use of and source of a replacement engine for the Pacifica were unfair practices and breached material disclosure requirements. Before I explain further, I will set out the facts relevant to the contraventions.

43. [REDACTED] filed a complaint and a request for compensation with the Consumer Protection Division of the Financial and Consumer Affairs Authority (CPD) describing her concern that Jack Mally Motors misrepresented the vehicle and did not provide full disclosure about the vehicles history prior to entering into the transaction.

44. An investigation was conducted into Jack Mally Motors's dealings with [REDACTED]

45. [REDACTED] purchased a 2006 Chrysler Pacifica (Pacifica) on or about July 10, 2018, from Jack Mally Motors in Wynyard, Saskatchewan. [REDACTED] purchased the vehicle as a personal use family vehicle. The bill of sale (BOS) indicates she paid \$5,000 for the vehicle and recorded 188,200 KM on the vehicle at the time of purchase.

46. [REDACTED] states that prior to entering into the contract the salesperson, [REDACTED] verbally indicated that they had just replaced engine with one from SGI Salvage and it only had 30,000 km on it. Additionally, a service invoice from Jack Mally Motors dated May 16, 2018, states that "remove and replace engine with used from SGI". The service records further states that this was for the Pacifica and the odometer at the time the vehicle was brought into the shop was 188,157, and out of the shop was 188,159.

47. [REDACTED] took possession of the vehicle and soon after, the check engine light came on while on her way home.

48. The following day, on July 11, 2018, [REDACTED] contacted the dealership. She was told to stop by the next time she was in the area, and they would do a diagnostic on the vehicle.

49. On July 12, 2018, [REDACTED] took the vehicle to a local Watson mechanic, and the engine scan showed the Catalytic Converter was in need of repair or replacement. After the scan, [REDACTED] indicates the check engine light went out, and it remained out for about a week.

50. [REDACTED] proceeded to call Jack Mally Motors and spoke with [REDACTED] who is the Service Manager. According to [REDACTED] statement, she was told by [REDACTED] not to worry unless the light starts flashing, but she could bring it in, and they would do a diagnostic on it.

51. [REDACTED] states that on July 18, 2018, that she and her friend, [REDACTED] went to Wynyard to have the vehicle diagnosed. [REDACTED] was concerned that the check engine light continued to come on and, at times, stayed on. [REDACTED] also believed that vehicle was running hotter than it should and that there was an odour of fuel while driving and that the vehicle felt like it surged often.

52. Invoice # 507207, dated July 18, 2018, from Jack Mally Motors, indicates that they ran several tests on the vehicle and were unable to duplicate the issues raised by [REDACTED] When the vehicle was returned to [REDACTED], the engine light was out.

53. On August 4, 2018, the check engine light came on once again. [REDACTED] states that their shop was closed because it was the weekend.

54. On August 7, 2018, [REDACTED] called [REDACTED] about the issue. [REDACTED] told her to put on at least 1,000 kilometers on the vehicle. The reply was that it would take some time as she does not travel very far. Again, [REDACTED] told her if it is not flashing, there is nothing to worry about. But if it does start flashing to pull over right away and shut it off. [REDACTED] expressed that as the engine had been changed it takes a while for the converter to match each other. [REDACTED] also mentioned that it

costs a lot to replace one, and if they did, she would have to pay the labour and possibly for the part.

55. [REDACTED] states that the light would stay on for a couple of weeks then go out for a period of time. This rotation continued. Within six months from the date of purchase, [REDACTED] put on 4,455 KM.

56. On January 4, 2019, following a trip to Humboldt, she stopped to get fuel before leaving Humboldt. The fuel attendant checked the oil, and [REDACTED] witnessed this, and the oil level was good. [REDACTED] departed Humboldt and drove about 27 kms on Highway # 368 and lost all power to her vehicle. The check engine light was now flashing, and she immediately pulled over, shut the vehicle off. She lifted the hood and there was no oil showing on the dipstick. No attempts to re-start the vehicle were made. She called Discovery Towing from Humboldt to tow her vehicle to her place in Watson.

57. The local mechanic attended her house and ran the scan without the vehicle running. The following codes were noted: PO420, PO301 and PO522. His assessment at the time was that he believed the engine was done.

58. On Monday, January 7, 2019, [REDACTED] called [REDACTED], the salesperson. When asked what they would do, the response was "Nothing". They are not paying for towing or fixing. What do you expect for \$5,000? She was told to get someone in Watson to look at it.

59. The vehicle was towed to OK Tire, a local garage in Watson. Invoice RO003505 dated January 11, 2019, from OK Tire, states that "please note the engine has a major oil leak and suspect internal engine damage. For proper diagnostic motor would need to be torn down."

60. The vehicle was then towed back to her yard.

61. [REDACTED] contacted SGI Salvage to check the price of a used engine. The person she spoke with [REDACTED] said they had not had that engine in Saskatchewan for over a year and have a waiting list with 15 people on it. [REDACTED] asked if Jack Mally Motors in Wynyard had purchased

one. [REDACTED] confirmed that they had not purchased one. Ms. [REDACTED] now believed that the salesperson [REDACTED] had lied to her at the time of the deal.

62. On January 9, 2019, [REDACTED] called Jack Mally Motors service manager [REDACTED]. She asked him when the motor was installed in the vehicle from SGI. [REDACTED] looked it up and stated it was installed by their shop on May 25, 2018. Later that day, [REDACTED] called [REDACTED] back and indicated that Jason, the owner of Jack Mally Motors, indicated that the engine was not from SGI Salvage, instead, it came from Southside Auto Wreckers in Weyburn.

63. [REDACTED] contacted Southside Wreckers who confirmed that the engine was purchased in May 2018, and the mileage on it was shown to be 143,000 kilometers.

64. [REDACTED] states that had she known the correct information at the time of the sale, she would not have purchased the vehicle.

65. CPD obtained Invoice #136664 from Southside Auto Wreckers dated May 16, 2018, which confirms that an engine with 143,714 KM on it was purchased for 06 Pacifica for \$1,260.00. According to the invoice, the stock number identified for this particular engine was 150196. The invoice further indicates the engine was sold to Jack Mally Motors, Wynyard, SK cardholder name, Jason Newberry.

66. CPD obtained a statement from [REDACTED], who was with [REDACTED] when she purchased the vehicle. [REDACTED] states that she was present when [REDACTED] told [REDACTED] that the motor was replaced from SGI salvage and only had 30,000 km on the engine.

67. A Saskatchewan Corporate Registry Search dated January 23, 2019, shows Jason Newberry as President of Jack Mally Motors Ltd. CPD also communicated with Mr. Newberry during its investigation of Ms. [REDACTED] complaint.

68. During CPD's investigation, Mr. Newberry of Jack Mally Motors admitted that the engine installed in [REDACTED] vehicle was not an engine from SGI Salvage. In his May 9, 2019 email, Mr.

Newberry explained that staff didn't change the source of the part (engine) after SGI sold it to someone else.

69. CPD obtained a photo of the engine installed in the 06 Pacifica, which confirms an engine with stock number 150196 was installed.

70. In summary, I find that Jack Mally Motors was aware of the true kilometers on the replacement engine at the time of purchase, the source of the engine and they failed to disclose this information.

71. I will now explain how Jack Mally Motors contravened the Act and Regulations with respect to its dealing with [REDACTED]

Contraventions of the Act and Regulations

72. Jack Mally Motors contravened section 8 of the Act when it engaged in unfair practices in its dealings with Ms. [REDACTED]

73. [REDACTED] was led to believe that the vehicle engine only had 30,000 km on it, and the replacement engine was from SGI when she decided to purchase the vehicle. The overall impression was the engine was reliable. However, Jack Mally Motors had knowledge of the true kilometers on the engine, and that it was sourced from Southside Auto Wreckers. It failed to assist the consumer with a remedy after admitting its misrepresentation. Its actions were not reasonable in the circumstances.

74. I find that Jack Mally Motors representation misled the consumer and was a false claim and an unfair practice under section 6 of the Act. Further, Jack Mally Motors knew that the engine had been used to a different extent and had a particular history that was not disclosed. It engaged in an unfair practice under section 7(e) of the Act.

75. Jack Mally Motors engaged in unfair practices, its actions were not reasonable and as such, it contravened section 8 of the Act.

76. Jack Mally Motors failed to disclose material facts contrary to the disclosure provisions in section 5-22 of the Regulations.

77. Dealers and salespeople have an obligation to disclose all "material facts" about the vehicle, even if the consumer does not ask.

78. A material fact is information that is known to the dealer or that the dealer should reasonably be expected to know that could reasonably be expected to influence a reasonable consumer's decision to buy or lease, or refuse to buy or lease a vehicle from the dealer.

79. The condition of the vehicle, including the kilometers on the engine could reasonably be expected to influence the decision to buy the vehicle. The actual kilometers on the engine were over 143,000 km not 30,000 km, a material fact that could be reasonably expected to influence [REDACTED] decision to buy the Pacifica. These material facts were known to Jack Mally Motors at the time the vehicle was purchased and not disclosed to [REDACTED] contrary to the Regulations.

Decision:

80. For the reasons above, I am satisfied after consideration and investigation of a complaint that Jack Mally Motors has contravened the Act and the Regulations regarding its dealings with [REDACTED]. In being so satisfied, I have the authority pursuant to 5-1(2)(d) of the Regulations to demand that Jack Mally Motors forfeit its financial security provided in the form of a bond, and I am exercising that authority by demanding that the bond be forfeited in the full penal amount.

Appeal Information

81. If you are directly affected by my decision you may appeal to the court. Section 85 of the Act provides as follows:

85(1) Any person who is directly affected by an order or decision of the director pursuant to this Act may appeal the order or decision to the court.

(2) An appeal must be made within 20 business days after a decision or order of the director.

(3) An appellant shall serve a notice of appeal on the director and any other person that the court may order.

82. Please see the Act for further details if you wish to appeal.

DATED at Regina, Saskatchewan, this 16 day of November 2021.



Denny Huyghebaert
Deputy Director under the *Consumer Protection
and Business Practices Act*