

IN THE MATTER OF
THE CONSUMER PROTECTION AND BUSINESS PRACTICES ACT
S.S. 2013, c. C-30.2

AND

IN THE MATTER OF

JASON SCHMALTZ, carrying on business as
JAYZ AUTO REPAIR & PERFORMANCE

DECISION

Introduction

1. The activities and conduct of vehicle dealers are regulated in Saskatchewan under *The Consumer Protection and Business Practices Act* (the “Act”) and *The Consumer Protection and Business Practices Regulations* (the “Regulations”). As Deputy Director appointed pursuant to section 77 of the Act, I have the responsibility of administering the Act and the Regulations. As set out in clause 2(d) of the Act, any references in the Act to the director include the Deputy Director.
2. Jason Schmaltz (“Jason”), carrying on business as Jayz Auto Repair & Performance (“Jayz Auto” or the “Licensee”), is currently a vehicle dealer licensed under the Act pursuant to licence number 100016. Jayz Auto is owned and operated as a sole proprietorship by Jason Schmaltz.
3. By Notice of Proposed Action dated September 18, 2018 (“NOPA”), I provided Jayz Auto with notice of my intention to cancel its vehicle dealer licence on the basis of information gathered in the course of an investigation (the “Collected Information”) by staff of the Consumer Protection Division, Financial and Consumer Affairs Authority of Saskatchewan (“FCAA Staff”) which suggested that Jayz Auto had breached the Act and the Regulations and had engaged in conduct that raised concerns regarding his suitability to be licensed. The NOPA invited Jason to provide me with any information he wished for me to consider as to why I should not cancel his vehicle dealer licence.
4. Section 65 of the Act authorizes me, upon providing a party with appropriate notice, to cancel or suspend a licensee’s licence if a licensee has failed to comply with the Act or the Regulations, or if I am satisfied that a licensee is no longer suitable to be licensed or if the licensing is for any reason objectionable.
5. By letter dated October 10, 2018, Jason submitted written representations (the “Representations”) to me in response to the NOPA. In the Representations, Jason did not dispute any of the allegations included in the NOPA. He indicated that he now understood the need to be more vigilant to develop protocols to ensure that it would not happen again. He also indicated that he has a better understanding of the proper documents and safety regulations. He further stated that he had taken proper steps to make sure that he was familiar with the newest regulations by watching webinars and working with our office to ensure that his customers have safe, reliable vehicles with the proper documents.

6. I have fully considered the Collected Information and the Representations and for the reasons outlined below, I am satisfied that Jayz Auto has breached the Act and the Regulations and that Jayz Auto is no longer suitable to be a licensed vehicle dealer in Saskatchewan.

The Law

7. The Act and the Regulations are consumer protection legislation. As such, their provisions should be interpreted and applied in order to best achieve their goal of promoting the protection of the public.
8. The Act allows the director to cancel a motor vehicle dealer's licence if the licensee is not "suitable to be licensed" or if the licensee has failed to comply with the Act or the Regulations (s. 65 and 61 of the Act).
9. Subsection 8(1) of the Act prohibits a supplier from committing an unfair practice. Section 6 of the Act sets out what constitutes an unfair practice involving a transaction or proposed transaction for goods or services. It includes, in part, saying anything or failing to say anything if a consumer might reasonably be deceived or misled as a result.
10. Subsection 8(2) of the Act prohibits an employee, agent, salesperson or representative of a licensee from committing an unfair practice. Subsection 8(3) holds both the licensee and the employee, agent, salesperson or representative responsible for the unfair practice.
11. The Act and Regulations require vehicle dealers to make certain disclosures to consumers before a consumer purchases or leases a motor vehicle. Section 5-22 of the Regulations sets out a definition of "material fact" and requires a dealer to disclose all material facts in writing to a prospective purchaser before a purchase contract is entered into.
12. Section 5-25 of the Regulations requires a dealer to complete a form of vehicle contract that meets the requirements set out and that has been filed with the director.
13. Subsection 5-21(1) of the Regulations prohibits a dealer from publishing an advertisement unless the advertisement contains the dealer's name or the dealer's licence number.
14. The above cited provisions of the Act and Regulations are found in Appendix A, attached hereto.

Contraventions and Suitability

15. After reviewing the Collected Information and the Representations provided to me by Jayz Auto, I am satisfied that Jayz Auto has contravened the Act and the Regulations and that Jayz Auto is not suitable to be licensed. In particular, I find that the Licensee:
 - (a) failed to provide to consumers a current printed VIN search result provided by Saskatchewan Government Insurance ("SGI") contrary to subclause 5-22(1)(b)(i) and subsection 5-22(2) of the Regulations;
 - (b) failed to disclose material facts to consumers contrary to subsections 5-22(1) and 5-22(2) of the Regulations;
 - (c) failed to complete, on the sale of a vehicle, a form of vehicle contract that meets the requirements of section 5-25 of the Regulations and that has been filed with the director pursuant to section 5-13, contrary to subsection 5-25(1) of the Regulations;

- (d) made certain statements or failed to disclose certain information, in a transaction or proposed transaction involving goods, that might have reasonably resulted in a consumer being deceived or misled, thereby committing an unfair practice contrary to clause 6(a) and subsection 8(1) of the Act;
- (e) published or caused to be published in an electronic publication an advertisement for the sale of a vehicle that did not contain (a) the name of the dealer; or (b) the words “Dealer Licence Number” or the initials “DL” followed by the number of the licence issued to the dealer, pursuant to Part V, Division 2 of the Regulations, contrary to subsection 5-21(1) of the Regulations; and
- (f) exhibited deceptive behaviour that does not meet the standard of suitability expected of licensees under the Act.

Background and Investigation

16. Jayz Auto has been licensed as a vehicle dealer in the Province of Saskatchewan since May 17, 2016. The first part of the licensing application provides submission instructions which outline the legislation that governs vehicle dealers. It also includes a link to a Vehicle Dealer Information Guide which licensees are encouraged to review to assist in preparing to apply for a dealer licence. In addition to the Vehicle Dealer Information Guide, our office has developed webinars and other materials to assist applicants and licensees with understanding the legislative requirements. These materials focus on different aspects of the legislation and in addition to being posted on our website they are also sent to all licensees by email.
17. When an application is approved, the licensee is notified electronically through the Financial and Consumer Affairs Authority Registration and Licensing System (“FCAA RLS”) that the licence has been issued. A notification is also sent to the licensee directing the licensee to review the licensing letter posted in the “FCAA LMS” system (the “Licensing Letter”).
18. On or about May 17, 2016, the Licensee was notified through the FCAA RLS that his licence was approved and that he must review his Licensing Letter in the FCAA LMS system in order to complete the licensing process. The Licensing Letter provided a variety of information including, in part:
 - (a) the Licensee’s licence number 100016;
 - (b) notification of the requirement to complete an annual filing;
 - (c) notification that the form of contract submitted with the Licensee’s licence application was the only form of contract approved for his use; and
 - (d) notification that the legislation requires that he provide a purchaser with a free SGI VIN search prior to the sale of a used vehicle.
19. On or about October 19, 2016, staff of Saskatchewan Government Insurance (“SGI Staff”) contacted our office to notify us that they had concerns about some vehicles that Jayz Auto had sold. They indicated that they had been conducting a body integrity inspection station investigation audit and discovered that a number of vehicles had been certified without meeting the provincial equipment requirements. As a result of this audit, SGI Staff advised our office that they had issued a recall on a number of vehicles that were not in compliance with the provincial equipment requirements and that three of the vehicles that were subject to this recall had been sold by Jayz Auto. SGI Staff further

advised our office that some of the purchasers had indicated that they had not been advised at the time they purchased the vehicles that the vehicles were previously registered as total loss vehicles with SGI.

20. As a result of this information, FCAA Staff conducted an investigation into Jayz Auto's operation as a licensed vehicle dealer. The investigation involved a review of the information and documentation requested and received from SGI, in-person interview sessions conducted by FCAA Staff with each of the purchasers, and a meeting between Jason Schmaltz and FCAA Staff on April 19, 2018 ("April Meeting").

Findings

21. My findings set out below are based on the Collected Information and the Representations. The primary concerns that arise in this matter include that the Licensee:
 - (a) made certain statements or failed to disclose certain information that may have deceived or misled purchasers;
 - (b) failed to make certain required disclosures of material facts to purchasers, such as whether a vehicle was previously deemed a total loss and VIN search results;
 - (c) failed to complete the required form of vehicle contract; and
 - (d) published an electronic advertisement for a vehicle without including reference to the dealer name or dealer licence number.
22. As indicated above, Jason did not deny committing these breaches and apologized for his actions.

Consumer 1

23. On or about November 9, 2016, FCAA Staff conducted an interview with Consumer 1 regarding the purchase of a 2008 Nissan Sentra (the "Sentra") from Jayz Auto. In that interview, Consumer 1 indicated the following:
 - (a) that he met Jason in North Battleford at a mechanical shop (not Jayz Auto's dealership location);
 - (b) that Jason told him that he had purchased the Sentra for his wife three months prior;
 - (c) that Jason did not provide him with a VIN search; and
 - (d) that Jason did not tell him that the Sentra was previously a total loss vehicle.
24. The SGI Salvage Invoice for the Sentra indicates the "Date Ordered" by Jason Schmaltz was May 5, 2016.
25. The Licensee completed an SGI Transfer of Ownership form dated June 2, 2016 to transfer the Sentra from Jason Schmaltz, in his personal name, to Consumer 1.
26. Jason indicated at the April Meeting that he did not recall the purchase and sale of this vehicle nor any details about the vehicle.
27. On the basis of the foregoing, I find:
 - (a) that the Licensee failed to complete a form of vehicle contract that meets the requirements of section 5-25 of the Regulations and that has been filed with the director pursuant to section 5-13, contrary to subsection 5-25(1) of the Regulations;

- (b) that the Licensee made statements that he had bought the vehicle for his wife three months prior when he had only purchased it from SGI Salvage a month before the sale date indicated on the SGI Transfer of Ownership form; therefore, I am inclined to find that Jason said something that might have reasonably misled or deceived Consumer 1 in the transaction for the purchase of the Sentra, thereby committing an unfair practice contrary to clause 6(a) and subsection 8(1) of the Act;
- (c) that the false statement made by the Licensee as to when he had purchased the Sentra and for what purpose he had purchased it was deliberate and deceitful conduct;
- (d) that the Licensee contravened subparagraph 5-22(1)(b)(i) and subsection 5-22(2) of the Regulations by failing to provide to Consumer 1 a current printed VIN search result provided by SGI.
- (e) that the Licensee failed to disclose that the vehicle was previously a “total loss”, and as such, contravened clause 5-22(2)(a) of the Regulations by failing to disclose in writing all material facts that he knew or ought to have known at the time the vehicle contract was entered into; and
- (f) that the failure to say anything about the vehicle’s history as a “total loss” may have reasonably misled or deceived Consumer 1 in the course of the transaction and therefore constitutes an unfair practice contrary to clause 6(a) and subsection 8(1) of the Act.

Consumer 2

28. On or about November 4, 2016, FCAA Staff conducted an interview with Consumer 2 regarding the purchase of a 2010 Dodge Avenger (the “Avenger”) from Jayz Auto. In that interview, Consumer 2 indicated the following:
- (a) that he saw a “for sale” sign with a phone number in the Avenger’s window and he saw a private ad on the North Battleford Buy and Sell page on Facebook;
 - (b) that he met Jason at OK Tire to look at the Avenger and to take it for a test drive;
 - (c) that Jason did not provide him with a VIN search;
 - (d) that Jason told him that he bought the Avenger in Saskatoon, fixed it up and used it for work a couple of times;
 - (e) that he asked Jason if any work had been done on the Avenger and Jason only told him the front end was “messed up” and that he fixed it.
 - (f) that Jason did not tell him about the damage to the rear end and frame of the Avenger as identified in the SGI motor vehicle inspection report;
 - (g) that Jason did not tell him that the Avenger was previously a total loss vehicle; and
 - (h) that he received a letter from SGI after purchasing the Avenger indicating that the Avenger was previously a total loss vehicle and that the frame of the body had been compromised.
29. The SGI Salvage Invoice for the Avenger indicates the “Date Ordered” by Jason Schmaltz was June 29, 2016.
30. The Licensee completed a vehicle contract dated August 3, 2016 to transfer the Avenger from Jayz Auto to Consumer 2.
31. Jason admitted at the April Meeting that he had not provided disclosure to Consumer 2 and had not included all of the required information on the vehicle contract.

32. On the basis of the foregoing, I find:

- (a) that the Licensee published or caused to be published in an electronic publication an advertisement for the sale of a vehicle that did not contain (a) the name of the dealer; or (b) the words “Dealer Licence Number” or the initials “DL” followed by the number of the licence issued to the dealer, pursuant to Part V, Division 2 of the Regulations, contrary to subsection 5-21(1) of the Regulations
- (b) that the Licensee did not tell Consumer 2 about the damage to the rear end and frame of the Avenger and failed to disclose that the vehicle was previously a “total loss”, and therefore, I am inclined to find that the failure to disclose this information to Consumer 2 might reasonably have misled or deceived Consumer 2 in the transaction for the purchase of the Avenger, and would constitute an unfair practice contrary to clause 6(a) and subsection 8(1) of the Act;
- (c) that the failure to disclose the previous damage to the rear end and frame of the Avenger was deliberate and deceitful conduct;
- (d) that the Licensee contravened subparagraph 5-22(1)(b)(i) and subsection 5-22(2) of the Regulations by failing to provide to Consumer 2 a current printed VIN search result provided by SGI; and
- (e) that the Licensee failed to disclose that the vehicle was previously a “total loss”, and as such, contravened clause 5-22(2)(a) of the Regulations by failing to disclose in writing all material facts that he knew or ought to have known at the time the vehicle contract was entered into.

Consumer 3

33. On or about November 30, 2016, FCAA Staff conducted an interview with Consumer 3 regarding the purchase of a 2008 Ford Escape (the “2008 Escape”) from Jayz Auto. In that interview, Consumer 3 indicated the following:

- (a) that Jason did not provide her with a VIN search result;
- (b) that he did not tell her that the 2008 Escape was previously a total loss vehicle;
- (c) that Jason told her and her mother that he was selling his wife’s vehicle; and
- (d) that when she asked Jason if the 2008 Escape “had any problems”, he told her that the vehicle was good and there were no problems.

34. The SGI Salvage Invoice for the 2008 Escape indicates the “Date Ordered” by Jason Schmaltz was July 6, 2016.

35. The Licensee completed a vehicle contract dated September 13, 2016 to transfer the 2008 Escape from Jayz Auto to Consumer 3.

36. On the basis of the foregoing, I find:

- (a) that the Licensee contravened subparagraph 5-22(1)(b)(i) and subsection 5-22(2) of the Regulations by failing to provide to Consumer 3 a current printed VIN search result provided by SGI;

- (b) that the Licensee failed to disclose that the vehicle was previously a “total loss”, and as such, contravened clause 5-22(2)(a) of the Regulations by failing to disclose in writing all material facts that he knew or ought to have known at the time the vehicle contract was entered into;
- (c) that he intentionally avoided truthfully and fully answering the purchaser’s direct question as to whether the 2008 Escape “had any problems” and that this constitutes deceitful and harmful conduct; and
- (d) that the failure to disclose that the 2008 Escape was previously a “total loss” might reasonably have misled or deceived Consumer 3 in the transaction for the purchase of the vehicle, and therefore constitutes an unfair practice contrary to clause 6(a) and subsection 8(1) of the Act.

Consumer 4

37. On or about November 23, 2016, FCAA Staff conducted interviews with each of Consumer 4 and her father regarding the purchase of a 2009 Ford Escape (the “2009 Escape”) from Jayz Auto. In those interviews, they indicated the following:
- (a) that Consumer 4 saw a private ad on Kijiji for the 2009 Escape;
 - (b) that they met with Jason’s wife at the Western Development Museum in North Battleford to look at the vehicle, then at Tim Horton’s in Battleford a few weeks later and then at the SGI in North Battleford the next day;
 - (c) that Jason’s wife did not provide them with a VIN search; and
 - (d) that neither Jason nor his wife disclosed that the 2009 Escape was previously a total loss vehicle.
38. The SGI Salvage Invoice for the 2009 Escape indicates the “Date Ordered” by Jason Schmaltz was May 27, 2016.
39. The Licensee completed an SGI Transfer of Ownership form dated June 22, 2016 to transfer the 2009 Escape from Jason Schmaltz, in his personal name, to Consumer 4.
40. The Licensee indicated at the April Meeting that he did not recall the purchase and sale of this vehicle nor any details about the vehicle.
41. On the basis of the foregoing, I find:
- (a) that the Licensee published or caused to be published in an electronic publication an advertisement for the sale of a vehicle that did not contain (a) the name of the dealer; or (b) the words “Dealer Licence Number” or the initials “DL” followed by the number of the licence issued to the dealer, pursuant to Part V, Division 2 of the Regulations, contrary to subsection 5-21(1) of the Regulations.;
 - (a) that the Licensee contravened subparagraph 5-22(1)(b)(i) and subsection 5-22(2) of the Regulations by failing to provide to Consumer 4 a current printed VIN search result provided by SGI;
 - (b) that the Licensee failed to disclose that the 2009 Escape was previously a “total loss”, and as such, contravened clause 5-22(2)(a) of the Regulations by failing to disclose in writing all material facts that he knew or ought to have known at the time the vehicle contract was entered into;

- (c) that the failure to disclose that the 2009 Escape was previously a total loss might reasonably have misled or deceived Consumer 4 in the transaction for the purchase of the vehicle, and therefore constitutes an unfair practice contrary to clause 6(a) and subsection 8(1) of the Act; and
- (d) that the Licensee failed to complete a form of vehicle contract that meets the requirements of section 5-25 of the Regulations and that has been filed with the director pursuant to section 5-13, contrary to subsection 5-25(1) of the Regulations.

Consumer 5

42. On or about November 23, 2016, FCAA Staff conducted an interview with Consumer 5 regarding the purchase of a 2013 Mazda 3 (the “Mazda 3”) from Jayz Auto. In that interview, Consumer 5 indicated the following:
- (a) that he met with Jason’s wife and arranged to look at the Mazda 3. Consumer 5 said they met 4 miles south of Battleford at Jason’s house;
 - (b) that Jason’s wife told him that the Mazda 3 was her vehicle and she had hit a deer and totalled it off.
 - (c) that Jason’s wife said that Jason had fixed it up and they wanted to sell it;
 - (d) that he believed it was a private sale;
 - (e) that he was not provided with a printed VIN search.
43. The SGI Salvage Invoice for the Mazda 3 indicates the “Date Ordered” by Jason Schmaltz was July 6, 2016.
44. The Licensee completed a transfer of ownership form dated August 9, 2016 to transfer the Mazda 3 from Jason Schmaltz, in his personal name, to Consumer 5. This form was not the vehicle contract required by the Act and Regulations.
45. On the basis of the foregoing, I find:
- (a) that the Licensee failed to complete a form of vehicle contract that meets the requirements of section 5-25 of the Regulations and that has been filed with the director pursuant to section 5-13, contrary to subsection 5-25(1) of the Regulations; and
 - (b) that the Licensee contravened subparagraph 5-22(1)(b)(i) and subsection 5-22(2) of the Regulations by failing to provide to Consumer 5 a current printed VIN search result provided by SGI.

Consumer 6

46. On or about November 16, 2016, FCAA Staff conducted an interview with Consumer 6 regarding the purchase of a 2011 Chevrolet Cruz (the “Cruz”) from Jayz Auto. In that interview, Consumer 6 indicated the following:
- (a) that she saw a private ad on Kijiji for the Cruz;
 - (b) that Jason did not provide her with a printed VIN search; and
 - (c) that Jason did not tell her that the vehicle was previously a “total loss”.
47. The SGI Salvage Invoice for the Cruz indicates the “Date Ordered” by Jason Schmaltz was July 6, 2016.

48. The Licensee completed a vehicle contract dated August 24, 2016 to transfer the Cruz from Jayz Auto to Consumer 6.
49. On the basis of the foregoing, I find:
- (a) that the Licensee published or caused to be published in an electronic publication an advertisement for the sale of a vehicle that did not contain (a) the name of the dealer; or (b) the words “Dealer Licence Number” or the initials “DL” followed by the number of the licence issued to the dealer pursuant to Part V, Division 2 of the Regulations, contrary to subsection 5-21(1) of the Regulations;
 - (a) that the Licensee contravened subparagraph 5-22(1)(b)(i) and subsection 5-22(2) of the Regulations by failing to provide to Consumer 6 a current printed VIN search result provided by SGI;
 - (b) that the Licensee failed to disclose that the Cruz was previously a “total loss”, and as such, contravened clause 5-22(2)(a) of the Regulations by failing to disclose in writing all material facts that he knew or ought to have known at the time the vehicle contract was entered into; and
 - (c) that the failure to disclose that the Cruz was previously a total loss might reasonably have misled or deceived Consumer 6 in the transaction for the purchase of the vehicle, and therefore constitutes an unfair practice contrary to clause 6(a) and subsection 8(1) of the Act.

Analysis

50. The Act and Regulations require vehicle dealers to make certain disclosures to consumers prior to the purchase and sale of a vehicle. As indicated above, the Regulations specifically require that all material facts are to be disclosed to purchasers. This includes any information that the dealer knows or should reasonably be expected to know, that could reasonably be expected to influence a reasonable consumer’s decision to buy a vehicle from the dealer.
51. Whether a vehicle was previously classified as a “total loss” is a material fact that could reasonably be expected to influence a reasonable consumer’s decision to buy the vehicle. The value of a vehicle may be influenced by its previous status as a “total loss” and an individual may be concerned about the ability to resell the vehicle. Additionally, individuals may be concerned that the vehicle will have safety issues as a result of the prior damage and repairs and they may worry that the vehicle will require additional repairs or maintenance.
52. The legislators also chose to require the disclosure of a “current printed VIN search result provided by Saskatchewan Government Insurance”, which would effectively identify to a purchaser a history of claims for a particular vehicle. The fact that this information is specifically set out as a requirement in the Regulations demonstrates the importance that is placed on it in achieving its consumer protection goals.
53. In this investigation, one of the transactions that was reviewed involved a vehicle that was later recalled by SGI for safety issues. This raises my level of concern regarding the potential harm to the public. The importance of complying with the Regulations and disclosing the required information is highlighted in this instance where the vehicle did not comply with the provincial equipment requirements.

54. The information that was not disclosed in the subject transactions is critical information for the consumer. Accurate information may dissuade consumers from deciding to buy a vehicle that has been written off as a total loss or it may affect how much he or she is willing to pay. The Licensee's failure to disclose the required information places consumers at risk of not only financial, but also personal harm.
55. As stated earlier, the Licensee did not dispute any of the allegations included in the NOPA. In his Representations, he states that he now understands the requirements of the legislation and he identifies a number of steps that he will take in order to comply. Unfortunately, these assurances are past due. The Licensee has had numerous opportunities to address the deficiencies and I am not satisfied that he will change his behaviour going forward.
56. As identified above, the Licensee made multiple false and misleading statements to consumers that I consider to exhibit deceitful and harmful conduct. He told Consumer 1 that he had purchased the Sentra three months' prior for his wife when he had only just purchased it from SGI Salvage one month prior. Given the short timeframe in which the Licensee bought, repaired and sold the Sentra, it is unlikely that he simply forgot the details. It is my view that he bought the vehicle for the purpose of repairing and selling and not for his wife to use. He withheld information from Consumer 2 regarding previous significant damage to the rear end and frame of the Avenger and misdirected the consumer's attention to the front end of the vehicle. Given that this vehicle was later recalled by SGI due to a failed safety inspection for the damage to the rear end and frame of the vehicle, I find this conduct to be particularly deceitful and harmful. Lastly, he avoided providing a full and truthful answer to Consumer 3's inquiry as to whether the vehicle "had any problems". He simply told her that it was good and the vehicle had no problems but he did not provide her with any of its damage and repair history.
57. Based on the foregoing, I hereby find that the Licensee has made misleading and deceitful statements which have put consumers at risk of harm. Consumers have relied on the Licensee's statements in making decisions about whether or not to purchase a vehicle and what was a suitable purchase price. Given the number of instances in which the Licensee misrepresented or withheld the required information, and the lack of appreciation of the seriousness of these matters, or explanation from the Licensee, I am left with no choice but to find that the Licensee acted deliberately in deceiving potential purchasers.
58. The conduct that the Licensee has exhibited does not meet the standard of suitability that I expect and require of licensees under the Act. Madame Justice Sharma of the British Columbia Supreme Court noted the following in consideration of an applicant's past conduct:
- [23] The Registrar states that the requirement to examine a person's past conduct demonstrates an overarching concern with public safety. Past conduct is the statutory tool by which the Registrar can determine if applicants will be governable, act in accordance with the law and conduct themselves with honesty and integrity. Salespersons are in a position of trust with the buying public who rely on them to give clear and honest information about buying motor vehicles. The public also expects safety to be a priority if taking a test drive with a salesperson. Lastly, integrity is important because salespersons may be privy to customer's confidential personal information including home address and financial information.
- Fryer v. Motor Vehicle Sales Authority of British Columbia*, 2015 BCSC 279
59. These same principles are applicable to a review of a vehicle dealer's conduct. Based on the Collected Information and Representations, the Licensee has engaged in a pattern of conduct which deceived and

misled consumers effectively thwarting the consumer protection objectives of the Act. As a result, I am not satisfied that the Licensee is suitable to be licensed under the Act.

60. It is a licensee's obligation to be familiar with and abide by all applicable rules and regulations. As indicated above, we have developed and made materials available for applicants and licensees to make it easier to understand the legislative requirements. It is the Licensee's responsibility to review, understand and comply with those requirements if he chooses to operate as a licensed vehicle dealer.
61. Given these findings, I have considered the most appropriate way to address these alleged contraventions with a view to protecting the public from potential future harm. Some of the tools at my disposal to address compliance issues include suspending a licence, imposing terms and conditions on a licence, issuing a compliance order and entering into a voluntary compliance agreement. I have no assurances and am not convinced that employing any of the above tools would provide sufficient deterrence for Jayz Auto.
62. Cancelling a vehicle dealer's licence can serve as an effective deterrent not only for an individual licensee who has contravened the legislation but also as a general deterrent for other licensees in the industry. It also provides the utmost protection to the public, as it removes the risk associated with dealing with a licensed dealer who has proven to be deceitful when dealing with consumers.
63. The gravity and repetitive nature of the contraventions by Jayz Auto are significant and as a result my confidence that Jayz Auto will comply with the law in the future is severely diminished. I am not satisfied that Jayz Auto will comply with the law in the future and I am convinced that he will continue to pose a risk to the public if he is permitted to retain his vehicle dealer licence. The past conduct of the Licensee affords reasonable grounds for belief that he will not carry on business in accordance with law and with integrity and honesty.
64. Therefore, in order to satisfy my duty under the Act to protect the public, I hereby cancel the Licensee's licence.

Dated at the City of Regina in the Province of Saskatchewan this 26 day of March, 2019.



Denny Huyghebaert
Deputy Director, Consumer Protection Division
Financial and Consumer Affairs Authority of Saskatchewan

If you wish to appeal this decision, you may do so in accordance with section 85 of the Act, which is reproduced below:

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.

Appendix A

The Consumer Protection and Business Practices Act, SS 2013, c. C-30.2

Regulatory Authority

Issuance

61 The director may:

- (a) issue a licence to an applicant if the director:
 - (i) receives an application pursuant to section 58;
 - (ii) is satisfied that the applicant meets the requirements and satisfies the criteria for the licence set out in this Act and the regulations and has otherwise complied with this Act and the regulations; and
 - (iii) is satisfied that the applicant is suitable to be licensed and the proposed licensing is not for any reason objectionable; or
- (b) subject to section 71, refuse to issue a licence if the requirements set out in clause (a) are not met.

Suspension or cancellation of licence

65(1) Subject to section 71, the director may suspend or cancel a licence:

- (a) for the same reasons that the director might have refused to issue the licence pursuant to section 61;
 - (b) if the licensee has failed to comply with this Act or the regulations; or
 - (c) if there has been a prescribed change in the licensee's circumstances.
- (2) If the director considers it appropriate to do so, and on receipt of any prescribed reinstatement fee, the director may reinstate a licence that has been suspended.

Opportunity to be Heard

71 (1) In this section, "action" means an action that the director may take to refuse to issue a licence, to establish terms and conditions for a licence or to suspend or cancel a licence.

(2) Before taking an action, the director shall give the person who is the subject of the proposed action a written notice:

- (a) setting out the action proposed to be taken by the director and the grounds that, in the director's opinion, justify the action; and
- (b) informing the person of the person's right to make representations to the director as to why the action should not be taken.

(3) A person to whom a notice is sent pursuant to subsection (2) may, within 10 business days after receiving that notice, advise the director that:

- (a) the person requests an oral hearing; or
- (b) the person wishes to make written representations to the director respecting why the action should not be taken.

(4) Nothing in this section requires the director to give an oral hearing to any person who has given notice pursuant to clause (3)(b).

(5) A person who requests an oral hearing pursuant to clause (3)(a) must, within five business days after requesting the hearing, contact the director and arrange a date, time and place for the hearing.

(6) Written representations pursuant to clause (3)(b) must be received by the director within 20 business days after the person receives the notice pursuant to subsection (2).

(7) The director may take the action stated in the notice without considering any representations of the person if the person fails to:

- (a) advise the director in accordance with subsection (3);
- (b) meet the requirements of subsection (5) or (6) within the required time; or
- (c) appear on the date and at the time and place arranged for the hearing without the prior approval of the director.

(8) The director may extend the periods mentioned in subsection (3), (5) or (6) if, in the director's opinion, it is appropriate to do so.

(9) Notwithstanding subsection (2), if the director considers that it is necessary and in the public interest to take immediate action, the director may immediately take any action without giving the person an opportunity to be heard, but the director shall give the person an opportunity to make written representations or attend a hearing before the director within 10 business days after the date on which the director takes the action.

(10) On holding a hearing or receiving a person's written representations pursuant to this section, the director shall, within a reasonable period:

- (a) consider the submissions and make a decision;
- (b) notify the person, in writing, of the director's decision;
- (c) provide written reasons for the director's decision; and
- (d) provide the person with information respecting the right of appeal pursuant to section 85.

(11) Subsection (12) applies if:

- (a) a licensee holds more than one licence; and
- (b) the director is satisfied that the same grounds for taking action apply to more than one of the licensee's licences.

(12) In the circumstances mentioned in subsection (11), the director may provide the licensee:

- (a) with one written notice pursuant to subsection (2) that references all of the licensee's licences that are to be the subject of the action; and
- (b) with one oral hearing pursuant to this section that deals with all of the licensee's licences that are to be the subject of the action.

Contraventions

Unfair practices

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;

...

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.

The Consumer Protection and Business Practices Regulations, R.R.S. c. C-30.2 Reg 1

Advertising

5-21(1) No dealer or salesperson shall publish or cause to be published in a newspaper or other printed or electronic publication an advertisement for the sale of a vehicle unless the advertisement contains:

- (a) the name of the dealer; or
- (b) the words "Dealer Licence Number" or the initials "DL" followed by the number of the licence issued to the dealer pursuant to this Division.

Disclosure

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, and includes:

- (a) ...;
 - (b) in the case of a used vehicle:
 - (i) a current printed VIN search result provided by Saskatchewan Government Insurance;
 - ...
 - (c)
- (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;
 - (b) all of the elements of a vehicle contract as set out in subsection 5-25(2) except clauses (b), (i), (j) and (l);
 - (c) if a drive-away price has been advertised or displayed, the drive-away price.

Vehicle contract requirements

5-25(1) On the sale or lease of a vehicle, the dealer must complete a form of vehicle contract that meets the requirements of this section and that has been filed with the director pursuant to section 5-13.

- (2) Each vehicle contract must contain, at a minimum:
- (a) the names and addresses of the purchaser or lessee and the dealer;
 - (b) the date of the contract;
 - (c) the make, model and year of the vehicle and any specific model identifier;
 - (d) the VIN;
 - (e) particulars of extra equipment or accessories to be provided;
 - (f) the odometer reading;
 - (g) if the vehicle's odometer is broken or faulty, has been replaced, has been

- rolled back or is in miles, a statement to that effect;
- (h) the selling price, or if sold at an auction, the final bid price;
- (i) the actual amount of the down payment or deposit, if any;
- (j) details of trade-in or exchange, if any, including the amount of any outstanding security relating to the trade-in or exchange;
- (k) additional warranties, if any;
- (l) if the dealer financed the purchase or lease, a statement to that effect; and
- (m) the name of the salesperson.

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