

**IN THE DISTRICT COURT
AT AUCKLAND**

**CRI-2016-004-001119
[2016] NZDC 25266**

THE COMMERCE COMMISSION
Prosecutor

v

NEZAM ANWER
ZODIAC MOTOR COMPANY LIMITED
Defendants

Hearing: 9 December 2016
Appearances: S Lowery for the Prosecutor
J Billington QC for the Defendants
Judgment: 9 December 2016

NOTES OF JUDGE C J FIELD ON SENTENCING

[1] In this matter the Zodiac Motor Company Limited has pleaded guilty to six representative charges under the Fair Trading Act 1986 involving the use of the AA appraised used vehicle dealer identification, a valuable piece of information about any company and one which the AA regards highly as it impinges on their reputation as well as that of the dealer.

[2] In this case a large number of vehicles were sold under that, no doubt as a result or at least in part of that description. The charges span a one-year period from June 2014 to June 2015.

[3] The offence of course is representing, on his website and elsewhere, that Zodiac was an AA appraised dealer when it was not. The company used flags

bearing those words, radio advertisements and I think some 151 of those were advertised on a local radio station.

[4] Online description of the vehicles as AA appraised and listing vehicles not yet in New Zealand as AA appraised, when they were not. Counsel have made submissions concerning the appropriate level of fine and there is a measure of agreement between counsel which the Court is able to confirm on a principled basis having heard the submissions of the informant, bearing in mind the increase in penalties which now apply.

[5] Clearly there are a number of significantly aggravating features or factors of the offending. The Fair Trading Act is designed to facilitate consumer welfare and effective competition. It is consumer focused and gives force to the notion that traders, who conduct business fairly and lawfully, should not be disadvantaged by those who do not.

[6] This is an important feature of course in any case of this kind because it gives the defendant company an unfair advantage over its competitors. The importance of the untrue statement of course cannot be underestimated. The AA is a highly respected organisation.

[7] There is a significant degree of recklessness in relation to the offending over a period of time. The statements were in fact a complete departure from the truth. In all of these circumstances and the informant has referred to other aggravating features and it is submitted, and I accept, that an appropriate starting point, in terms of fine, will be \$150,000 representing the culpability in relation to the six charges that I am concerned with today.

[8] However, there have been a number of significant factors which can reduce that fine significantly. The defendant company has cooperated with the enquiry throughout. It has pleaded guilty at an appropriately early stage and would, in my view, result in a reduction of some \$45,000 from the starting point.

[9] The appropriate fine therefore is one of \$105,000 and I propose to apportion that in the sum of \$17,500 for each of the charging documents. The company is accordingly fined on each of the six charging documents the sum of \$17,500.

[10] In terms of the payments of the fines ordered I direct that \$60,000 be paid forthwith with the balance of \$45,000 being paid over a six months period at the rate of \$7500 per month.

[11] Mr Anwer is to enter into an enforceable undertaking under s 46A of the Act to pay Zodiac's fine if the company fails to do so on time. If Zodiac fails to pay the Commission it could apply for a Court order directing that Mr Anwer will pay.



C J Field
District Court Judge