

**In the matter of a Discipline Hearing held pursuant to Regulation
332/08 of the Motor Vehicle Dealers Act, 2002, of the Ontario Motor
Vehicle Industry Council**

DISCIPLINE DECISION

Between :

REGISTRAR, MOTOR VEHICLE DEALERS ACT, 2002

-AND-

AL-FARRA, AHMED SULIMAN o/a

VICTORIA CARS

Date of Decision: November 26, 2012

Panel Members:

Catherine Poultney (Chair)

Tom Kramer

Debbie Roberts

Findings: Breach 333/08, s.42(19)and Code of Ethics 332/08 5(16), 7,9

Fine: \$5000 and Completion of the OMVIC Certification Course

INTRODUCTION:

The hearing was held November 12, 2012 relating to a Notice of Complaint dated April 13, 2012. The Notice of Complaint alleged that the Respondent Mr Ahmed Suliman Al-Farra o/a Victoria Cars (the Dealer) violated the Code of Ethics as set out in Ontario Regulations 332/08, made under the Motor Vehicle Dealers Act, 2002 and section 42(19) of Regulation 333/08.

Ms Yovanka McBean represented the Registrar and Mr Al-Farra, Ahmed- Suliman o/a Victoria Cars was self represented.

The allegations relate to the sale of two vehicles:

2000 Ford Windstar (VIN 2FMDA5340YBA18692) which the dealer is alleged to have purchased on or about October 28, 2010. This vehicle was allegedly declared as having had a \$3878 accident repair history. On or about December 7th, 2010 the Dealer allegedly sold this vehicle without providing disclosure of the accident repair history. This being contrary to section 42(19) of Regulation 333/08 as well as sections 7 and 9 of the Code of ethics.

2001 Pontiac Montana (VIN 1GMDU03E01D338114) which the Dealer is alleged to have purchased on October 28th, 2010. This vehicle was allegedly declared as having had a \$10438 accident repair history. On or about January 1, 2011, the dealer allegedly wholesaled this vehicle without providing disclosure of the accident repair history. This being contrary to section 5 of the Code of Ethics.

THE EVIDENCE

Two exhibits were marked:

EXHIBIT 1: Notice of Complaint dated April 13th, 2012

EXHIBIT 2: Document Brief

Ms McBean on behalf of the registrar called two witnesses.

Ms Erica Morrison OMVIC Compliance Inspector testified in regards to inspections she had conducted with Mr Al-Farra at his dealership Victoria Cars located at 477 Melvin Avenue Hamilton, Ontario. She visited the premises on two occasions on November 25, 2011 and again on November 28, 2011. The purpose of the visit was to conduct a books and records inspection. The initial visit resulted in the deactivation of Victoria Cars' registration due to non compliant premises. Ms Morrison testified that she indicated to Mr Al-Farra that she would return in a few days to complete the inspection. On November 28th, 2011 Ms Morrison returned to Victoria Cars, the premises was now in compliance and she conducted a books and records inspection. Ms Morrison testified as to the inspection findings, these findings included non-disclosure violations. Ms Morrison testified that upon inspection the dealer was not disclosing all material facts in writing on the retail contracts as required by section 42 of Regulation 333/08. She noted that she reviewed the inspection findings with Mr Al-Farra and reported her findings to the Registrar.

Mrs Laura Halbert OMVIC Director of Compliance testified to the period prior to Ms Morrison's inspections. She noted that OMVIC endeavors to visit each new dealer within 60 days of registration to answer questions, review deals to aide with compliance. Attempts were made to contact the Dealer on February 2nd, 2010, February 24, 2010 and May 06, 2010. Mr Al-Farra was unavailable at these times.

Mrs Halbert referenced schedule A of the document brief as the Terms and Conditions of registration, signed by Mr Al-Farra on May 16, 2009. She referred to section 26 and 29 of the Terms and Conditions under the heading "Disclosure", noting that all material facts must be disclosed in writing on the bill of sale as well as the true distance travelled.

Mrs Halbert testified that Mr Al-Farra completed the OMVIC Certification Course as required for registration and received a grade of 80%.

Ms McBean referenced both vehicles with the witnesses noting that disclosure on both vehicles had been made to the dealer.

1. **Manheim Canada Wholesale Bill of Sale dated October 28, 2010 (Page 42 Document Brief) 2000 Ford Windstar (VIN 2FMDA 5340YBA18692) noting Accident Repair \$3878**
2. **Manheim Canada Wholesale Bill of Sale dated October 28, 2010 (Page 53 Document Brief) 2001 Pontiac Montana VIN (1GMDU03E01D338114) noting Accident Repair \$10438**

Ms McBean referenced the same vehicles noting that disclosure in writing was not made to the customers as per the Dealers Bill of Sale.

1. **Victoria Cars Retail Bill of Sale dated December 07, 2010 (Page 44 Document Brief) 2000 Ford Windstar (VIN 2FMDA5340YBA18692) accident repair \$3878 is not disclosed. The purchaser in this case was a consumer.**
2. **Manheim Canada Wholesale Bill of sale Sellers Copy dated January 27, 2011 (Page 54 Document Brief) 2001 Pontiac Montana (VIN 1GMDU03E01D338114) noting the Accident Repair \$10438 is not disclosed. The purchaser in this case was a motor vehicle dealer.**

Mr Al-Farra (Dealer) Victoria Cars testified on his own behalf indicating that he is an honest man, but is not a machine and does at times make mistakes. His indicated that he required more guidance and training surrounding disclosure and compliance. He noted that he found the correspondence and exam based OMVIC Certification Course full of information but very difficult to apply in practice, in the daily course of operating his business. Mr Al-Farra noted that he wanted and would benefit from greater training and assistance from the Registrar.

Mr Al-Farra testified that he disclosed the accident history to the consumer purchasing the 2000 Ford Windstar (VIN 2FMDA5340YBA18692) via CARFAX which he gave directly to the consumer. Mr Al-Farra's explanation with respect to the 2001 Pontiac Montana VIN (1GMDU03E01D338114) was that it was sold back to the same auction that he had bought it from.

Analysis

The following legal framework is relevant to this case:

Regulation 333/08, s.42(19):

42. Additional Information in contracts of sale and lease

19. If the total cost of repairs to fix the damage caused to the motor vehicle by an incident exceed \$3000, a statement to that effect and if the registered motor vehicle dealer knew the total costs, a statement of the total costs.

Ontario Regulation 332/08

Sections 5(16), 7,9 Code of Ethics:

5. A registered motor vehicle dealer who enters into a contract to sell or lease a motor vehicle to a person who is also a registered motor vehicle dealer shall ensure that the following information is disclosed in the contract.

16 If the total cost of repairs to fix the damage caused to the motor vehicle by an incident exceed \$3000, a statement to that effect and if the registered motor vehicle dealer knew the total costs, a statement of the total costs.

7. A registrant shall ensure that all documents used by the registrant in the course of trade in a motor vehicle are current and comply with the law.

9. In carrying on business, a registrant shall not engage in any act or omission that, having regard to all the circumstances, would reasonably be regarded as disgraceful, dishonourable, unprofessional or unbecoming of a registrant.

In regards to the 2000 Ford Windstar (VIN 2FMDA5340YBA18692) evidence is clear that written disclosure was made to the Dealer via Manheim Canada Wholesale Bill of Sale. It is also clear that the dealer did not disclose this information in writing on the consumer's bill of sale. Further to this Mr Al-Farra the Dealer provided no evidence from the consumer that he did receive the CARFAX information noting the \$3878 Accident Repair.

The evidence therefore establishes that the dealer violated s.42(19) of Regulation 333/08, and therefore s.7 of the Code of Ethics, because the document did not comply with the Regulation.

Following with the 2001 Pontiac Montana (VIN 1GMDU03601D338114) written disclosure was made to the dealer via Manheim Canada Wholesale Bill of Sale. Further to this the Manheim Canada Wholesale Bill of sale indicates that the selling dealer Mr Al-Farra of Victoria Cars makes no written disclosure of the \$10438 Accident Repair.

The evidence therefore establishes that the dealer was not in compliance with s.5 of the Code of Ethics, and in particular, item 16.

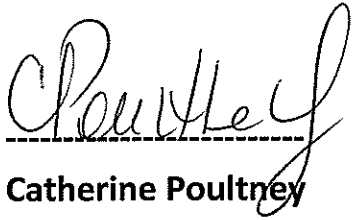
In the common course of business errors and omissions can and do occur, however of the 14 contracts reviewed during the inspection 8 of 14 were not compliant. It is accepted that further training would be beneficial to the dealer, but does not negate the responsibility of the respondent Mr Al-Farra to disclose material facts to the consumer.

Conclusion

Having reviewed and considered the evidence and testimony the panel hereby concludes that the dealer Mr Al-Farra, Ahmed Suliman o/a Victoria Cars breached Ontario Regulation 333/08 s.42(19), Ontario Regulation 332/08 5(16), 7, 9 of the Code of Ethics.

The Panel makes the following order:

- 1. The dealer will pay a fine in the amount of \$5000, \$2000 payable within 90 days of this order and the remainder within 6 months of this order**
- 2. The dealer Mr Al-Farra attend in person the OMVIC certification course (the "course") within 90 days of the date of this order, or if this course is not available within 100km of Mr Al-Farra's residential address , the first course available within said distance. The dealer will incur all costs associated with this.**

A handwritten signature in cursive script, appearing to read 'C. Poultney', written over a horizontal dashed line.

Catherine Poultney

Tom Kramer

Debbie Roberts