

DISCIPLINE DECISION

IN THE MATTER OF A DISCIPLINE HEARING HELD PURSUANT TO THE MOTOR
VEHICLE DEALERS ACT 2002, S.O. 2002, C.30, Sch. B

B E T W E E N :

REGISTRAR, *MOTOR VEHICLE DEALERS ACT, 2002*

- AND -

2334052 ONTARIO INC. o/a SAM'S AUTO

- AND -

HUSAM EL-TAWIL

Pursuant to Rule 1.07 of the Rules of Practice before the Discipline Committee and the Appeals Committee, I, the Chair of the Discipline Committee, have reviewed and considered the written Agreed Statement of Facts and Joint Submission on Penalty together with both Parties' waiver of a Hearing to this Proceeding and provide the following Order:

Date of Decision: December 2, 2021

Findings: Breach of Sections 6, 7 and 9 of the Code of Ethics

Order:

1. The Dealer is ordered to pay a fine in the amount of \$5,000. The Dealer agrees to pay \$250 per month for 20 months beginning **December 1, 2021**.
2. El-Tawil is ordered to pay a fine in the amount of \$1,000. El-Tawil agrees to pay \$50 per month for 20 months beginning **December 1, 2021**.
3. The Dealer is ordered to offer all current and future sales staff the opportunity to complete the Course. Current sales staff will be offered the course no later than **December 31, 2021**. Future sales staff will be offered the course within 90 days of being retained in this capacity by the Dealer. The Dealer will incur all costs associated with this. It is understood between the parties this clause does not apply to sales staff who have completed the course after January 1, 2009, or who are otherwise required to do so pursuant to the Act.

4. The Dealer and El-Tawil agree to comply with the Act and Standards of Business Practice, as may be amended from time to time.

Written Reasons:

Reasons for Decision

Introduction

This matter proceeded on the basis of an Agreed Statement of Facts, Joint Submission on Penalty and the Parties' Waiver of Hearing, pursuant to Rule 1.07 of the Rules of Practice before the Discipline Committee and the Appeals Committee.

Agreed Statement of Facts

The parties to this proceeding agree that:

1. 2334052 Ontario o/a Sam's Auto (the "Dealer") was first registered as a motor vehicle dealer in or around February 2013. Husam El-Tawil ("El-Tawil") was first registered as a motor vehicle salesperson in or around December 2011. At all material times, El-Tawil was the General Manager, as well as a person in charge of the day to day activities of the Dealer.

Direct correspondence with Dealer

2. During an inspection of the Dealer on or about May 9, 2013, an OMVIC inspector discussed the following with El-Tawil, on behalf of the Dealer:
 - a. The requirement to submit the proceeds from the sale of all third party warranties to the warranty provider within 7 days.
3. During an inspection of the Dealer on or about August 23, 2017, an OMVIC inspector reminded the Dealer of the following:
 - a. The requirement to submit the proceeds from the sale of all third party warranties to the warranty provider within 7 days
 - b. The importance of responding to OMVIC representatives in a timely manner when they reach out to the Dealer regarding consumer complaints.

October 2019 Consumer complaint:

4. On or about October 2, 2019, OMVIC received a consumer complaint. The consumer alleged that they had given the Dealer a \$500 deposit for a 2013 Kia Optima (VIN KNAGN4A70D5314224). The consumer had since decided not to go through with this purchase and was requesting their deposit be returned. The Dealer refused to return the deposit.
5. The consumer's copy of the bill of sale lacked the following required information:
 - a. The vehicle's price
 - b. The vehicle's trim level
 - c. The expected delivery date of the vehicle

This is contrary to sections 40(2) and 42(16) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics.

6. In an attempt to resolve the consumer's complaint about the non-return of the deposit, an OMVIC complaint-handler made at least twenty (20) different attempts, many of these in writing, to contact the Dealer and to request the Dealer's documents relating to the above-mentioned trade. The Dealer failed to respond to these requests.
7. By not responding to the complaint handler's requests, the Dealer contravened section 14(3) of the Act, as well as section 9 of the Code of Ethics.
8. As a result of the Dealer's failure to respond to the complaint handler's requests, an OMVIC inspector conducted an inspection of the Dealer. This inspection began on or about January 13, 2020 and was completed on or about January 17, 2020.

Falsified Bill of Sale

9. During the inspection, a representative of the Dealer provided the inspector with a copy of the purported bill of sale for the above mentioned purchase of the 2013 Kia Optima. This bill of sale differed from the copy which had been provided to the consumer. Specifically, the Dealer's copy contained the information about the vehicle's price, trim level, and expected delivery date which had been omitted from the consumer's copy.
10. By falsifying the Bill of Sale after it had been signed by the consumer, the Dealer contravened section 26 of the Act, as well as sections 7 and 9 of the Code of Ethics.
11. The Dealer has since agreed to refund the consumer's \$500 deposit.

OMVIC inspection:

12. The above-mentioned inspection of the Dealer's books and records also revealed the following additional issues:

Third party warranties:

13. Between on or about October 23, 2019 and on or about December 16, 2019, the Dealer sold third-party warranties for the following vehicles, but failed to remit the proceeds of the sale of these warranties to the warranty provider within 7 days of the date of sale:
 - a. October 23, 2019: 2011 Hyundai Sonata (VIN 5NPEC4AC4BH249629)
 - b. November 14, 2019: 2015 Ford Transit (VIN NM0LS7F79F1227627)
 - c. November 21, 2019: 2015 Nissan NV200 (VIN 3N6CM0KN0FK691782)
 - d. December 6, 2019: 2011 Honda CRV (VIN 5J6RE4H78BL818010)
 - e. December 16, 2019: 2016 Toyota Camry (VIN 4T1BF1FK1GU265126)

This is contrary to section 47(7) of Regulation 333/08, as well as section 9 of the Code of Ethics.

EI-Tawil Generally

14. EI-Tawil failed to ensure that the Dealer conducted its business in compliance with the Regulations and Code of Ethics, personally contravening sections 6 and 9 of the Code of Ethics.

By failing to comply with the following sections of the *Motor Vehicle Dealers Act, 2002*:

Complaints, inspection and discipline

Duty to comply with request

14(3) A registrant who receives a written request for information shall provide the information as soon as practicable.

Falsifying information

26 No registrant shall falsify, assist in falsifying or induce or counsel another person to falsify or assist in falsifying any information or document relating to a trade in motor vehicles.

Regulation 333/08:

40. Contracts for sales of used motor vehicles

(2) A registered motor vehicle dealer shall ensure that any contract that the dealer enters into to sell a used motor vehicle to a purchaser who is not another registered motor vehicle dealer includes, in a clear, comprehensible and prominent manner, the following:

1. The matters required under paragraphs 1 to 3, 5 to 10, 14 to 19 and 21 to 27 of subsection 39 (2).

39. Contracts for sales of new motor vehicles

(2) A registered motor vehicle dealer shall ensure that any contract that the dealer enters into to sell a new motor vehicle to a purchaser who is not another registered motor vehicle dealer includes, in a clear, comprehensible and prominent manner, the following:

7. The date that the vehicle is to be delivered or a manner for determining that date.

42. Additional information in contracts of sale and leases

16. The trim level of the motor vehicle.

47. Sale of extended warranties

(7) If a registered motor vehicle dealer facilitates the sale of an extended warranty through the dealer to a purchaser or lessee of a motor vehicle who is not a registered motor vehicle dealer, the dealer shall,

(c) within seven days after the parties enter into the contract for the warranty, provide the seller of the warranty with

(ii) all payments that the dealer has received from the purchaser

It is thereby agreed the Dealer has breached the following sections of the Code of Ethics, as set out in Regulation 332/08:

Compliance

7. (1) A registrant shall ensure that all documents used by the registrant in the course of a trade in a motor vehicle are current and comply with the law. O. Reg. 332/08, s. 7 (1).

It is thereby agreed that El-Tawil has breached the following section of the Code of Ethics, as set out in Regulation 332/08:

Accountability:

6. (2) A registered salesperson shall not do or omit to do anything that causes the registered motor vehicle dealer who employs or retains the salesperson to contravene this Regulation or any applicable law with respect to trading in motor vehicles.

It is thereby agreed that the Dealer and El-Tawil have breached the following:

Professionalism:

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

Joint Submission on Penalty

1. The Dealer agrees to pay a fine in the amount of \$5000. The Dealer agrees to pay \$250 per month for 20 months beginning **December 1, 2021**.
2. El-Tawil agrees to pay a fine in the amount of \$1,000. El-Tawil agrees to pay \$50 per month for 20 months beginning **December 1, 2021**.
3. The Dealer agrees to offer all current and future sales staff the opportunity to complete the Course. Current sales staff will be offered the course no later than **December 31, 2021**. Future sales staff will be offered the course within 90 days of being retained in this capacity by the Dealer. The Dealer will incur all costs associated with this. It is understood between the parties this clause does not apply to sales staff who have

completed the course after January 1, 2009, or who are otherwise required to do so pursuant to the Act.

4. The Dealer and El-Tawil agree to comply with the Act and Standards of Business Practice, as may be amended from time to time.

Decision of the Chair

Having reviewed and considered the Agreed Statement of Facts, the Chair of the Discipline Committee hereby concludes that the Dealer and El-Tawil have breached subsections 6, 7 and 9 of the OMVIC Code of Ethics, as set out in Ontario Regulation 332/08, made under the *Motor Vehicle Dealers Act, 2002*. The Chair of the Discipline Committee also agrees with the Parties' Joint Submission on Penalty and, accordingly, makes the following Order:

1. The Dealer is ordered to pay a fine in the amount of \$5,000. The Dealer agrees to pay \$250 per month for 20 months beginning **December 1, 2021**.
2. El-Tawil is ordered to pay a fine in the amount of \$1,000. El-Tawil agrees to pay \$50 per month for 20 months beginning **December 1, 2021**.
3. The Dealer is ordered to offer all current and future sales staff the opportunity to complete the Course. Current sales staff will be offered the course no later than **December 31, 2021**. Future sales staff will be offered the course within 90 days of being retained in this capacity by the Dealer. The Dealer will incur all costs associated with this. It is understood between the parties this clause does not apply to sales staff who have completed the course after January 1, 2009, or who are otherwise required to do so pursuant to the Act.
4. The Dealer and El-Tawil agree to comply with the Act and Standards of Business Practice, as may be amended from time to time.

Reasons:

1. Neither the dealer nor El-Tawil have been before the Discipline Committee previously.
2. OMVIC states that it has no evidence indicating the warranty purchasers were without coverage as a result of the Dealer failing to remit the proceeds to the provider within the prescribed 7-day period.

Ontario Motor Vehicle Industry Council
Discipline Committee



Paul Burroughs, Chair

