

**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 -

HIGHLAND FORD SALES LIMITED

- AND -

DARREN SMYL

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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:** February 23, 2018

**Findings:** Breach of Section 4, 6 and 9 of the Code of Ethics

**Order:**

1. The Dealer is ordered to pay a fine in the amount of \$2,000 no later than **April 6, 2018**.
2. The Dealer agrees to ensure all sales staff employed by the Dealer have reviewed the August 2017 OMVIC advertising webinar. The Dealer will provide OMVIC with written confirmation from said staff that this has occurred, no later than **March 6, 2018**.
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 within 90 days of the date of the Discipline Committee Order. Future sales staff will be offered the course within 90 days of being retained in this capacity. 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 or who are otherwise required to do so pursuant to the Act.

4. The Dealer and Smyl 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. Highland Ford Sales Limited (the "Dealer") was first registered as a motor vehicle dealer in about January 1983. Darren Smyl ("Smyl") was first registered as a motor vehicle salesperson in about August 2006. At all material times Smyl was the officer, as well as the Person in Charge of the Dealer.

#### **OMVIC publications:**

2. In or around December 2008, OMVIC issued a Dealer Standards publication advising dealers of up and coming changes to the Act. Included in the bulletin was the requirement for dealers to advertise all inclusive vehicle prices ("all-in pricing") in advertisements.
3. After the Act was proclaimed, OMVIC further issued the following Dealer Standard publications reminding dealers of their all-in pricing advertising obligations:
  - a. Spring 2010
  - b. Summer 2010
  - c. Spring 2011
  - d. Spring 2013
  - e. Fall 2013
  - f. Issue #1
  - g. Issue #2
  - h. Issue #3 2014
  - i. Issue #4 2014
  - j. Issue #3 2015
  - k. Issue #1 2016
  - l. Issue #2 2016
  - m. Issue #3 2016
  - n. Issue #4 2016

4. Furthermore, OMVIC issued the following dealer bulletins which also reminded dealers of their all-in pricing advertising obligations:
  - a. January 2010 (2 publications)
  - b. April 2010 (2 publications)
  - c. February 2012
  - d. August 2012
  - e. April 2013
  - f. June 2014 (2 publications)
  - g. April 2015
  - h. July 2017
  - i. August 2017

**Direct correspondence with Dealer:**

5. By email dated April 2, 2014, the Dealer was reminded of its all-in pricing advertising obligations.
6. During an inspection on or about March 16, 2017, a representative of the Registrar reminded, Smyl, on behalf of the Dealer, of its all-in pricing obligations. Said representative further clarified that all-in pricing extended to advertising forms such as pricing adhered directly to vehicles on the lot ("window danglers").
7. By letter dated April 21, 2017, a representative of the Registrar further reminded Smyl, on behalf of the Dealer, that the all-in pricing requirements extended to window danglers.

**Dealer non-compliance:**

8. On or about November 3, 2017, a representative of the Registrar discovered the following non-compliant advertisement:
  - a. 2005 Mazda RX-8
    - i. Window dangler price: \$7,995 plus HST, licensing, and administration fee
    - ii. Website price: \$8,995

As such, the Dealer's advertised vehicle prices are not all-inclusive. This is contrary to section 36(7) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics.

9. As the Person in Charge of the Dealer, Smyl has failed to ensure the Dealer's advertising is compliant with industry regulations. As such, Smyl has breached section 6.1 of the Standards of Business Practice, as well as sections 6 and 9 of the Code of Ethics.

10. Since the issuance of the Notice of Complaint, the individual responsible for producing used vehicle advertising on behalf of the Dealer has agreed to successfully complete the Automotive Certification course (the "course"), no later than **April 6, 2018**.

By failing to comply with the following sections of the Motor Vehicle Dealers Act, 2002:  
Regulation 333/08

*36. Advertising:*

7. If an advertisement indicates the price of a motor vehicle, the price shall be set out in a clear, comprehensible and prominent manner and shall be set out as the total of,
  - (a) the amount that a buyer would be required to pay for the vehicle; and
  - (b) subject to subsections (9) and (10), all other charges related to the trade in the vehicle, including, if any, charges for freight, charges for inspection before delivery of the vehicle, fees, levies and taxes.

It is thereby agreed that the Dealer and/or Smyl have breached the following sections of the Code of Ethics, as set out in Regulation 332/08:

4. A registrant shall ensure that all representations, including advertising, made by or on behalf of the registrant in connection with trading in motor vehicles, are legal, decent, ethical and truthful.
6. 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.
9. In carrying on business, a registrant shall not engage in any act or omission that, having dishonourable, unprofessional or unbecoming of a registrant.

**Joint Submission on Penalty**

1. The Dealer agrees to pay a fine in the amount of \$2,000 no later than **April 6, 2018**.
2. The Dealer agrees to ensure all sales staff employed by the Dealer have reviewed the August 2017 OMVIC advertising webinar. The Dealer will provide OMVIC with written confirmation from said staff that this has occurred, no later than **March 6, 2018**.
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 within 90 days of the date of the Discipline Committee Order. Future sales staff will be offered the course within 90 days of being retained in this capacity. 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 or who are otherwise required to do so pursuant to the Act.

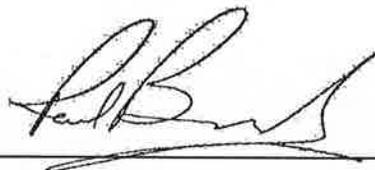
4. The Dealer and Smyl agree to comply with the Act and Standards of Business Practice, as may be amended from time to time.

#### **Decision of the Chair**

Having reviewed and considered the Agreed Statement of Facts, the Chair of the Discipline Committee hereby concludes that the Dealer breached subsection 4 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 \$2,000 no later than **April 6, 2018**.
2. The Dealer agrees to ensure all sales staff employed by the Dealer have reviewed the August 2017 OMVIC advertising webinar. The Dealer will provide OMVIC with written confirmation from said staff that this has occurred, no later than **March 6, 2018**.
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 within 90 days of the date of the Discipline Committee Order. Future sales staff will be offered the course within 90 days of being retained in this capacity. 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 or who are otherwise required to do so pursuant to the Act.
4. The Dealer and Smyl agree to comply with the Act and Standards of Business Practice, as may be amended from time to time.

Ontario Motor Vehicle Industry Council  
Discipline Committee



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*Paul Burroughs, Chair*