

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 -

WENDELL MOTOR SALES LTD *o/a* WENDELL CHRYSLER JEEP DODGE ON
FAIRWAY

- and -

CRAIG HENDRY

Pursuant to Rule 1.07 of the Rules of Practice before the Discipline Committee and the Appeals Committee, I, the Vice-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 18, 2020

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

Order:

1. The Dealer is ordered to pay a fine in the amount of \$4,000 no later than **April 10, 2020**.
2. Hendry is ordered to successfully complete the MVDA Key Elements Course no later than **April 10, 2020**.
3. The Dealer is ordered to offer all current and future sales staff the opportunity to complete the OMVIC Automotive Certification Course ("Course"). Current sales staff will be offered the Course no later than **April 10, 2020**. 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 after January 1, 2009, or who are otherwise required to do so pursuant to the Act.

4. The Dealer and Hendry 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. Wendell Motor Sales LTD o/a Wendell Chrysler Jeep Dodge on Fairway (the "Dealer") was first registered as a motor vehicle dealer in around March 1983. Craig Hendry ("Hendry") was first registered as a motor vehicle salesperson in around April 1988. At all material times, Hendry was the person in charge of the day to day activities of the Dealer.

OMVIC publications re: daily rental disclosure

2. In the winter of 2008, OMVIC issued a Dealer Standard publication advising dealers of the up and coming changes to the Act, including the requirement to disclose former daily rental vehicles in advertisements.
3. After the Act was proclaimed, OMVIC further issued the following publications reminding dealers of their advertising and disclosure obligations:

	<u>Dealer Standard: Publication Date</u>	<u>Subject Matter: Daily Rental Disclosure in Advertisements</u>
A.	Spring 2010	X
B.	Summer 2010	X
C.	Spring 2011	X
D.	Summer 2012	X
E.	Spring 2013	
F.	Fall 2013	X
	<u>OMVIC Bulletins: Publication Date</u>	
G.	April 2010	X



H.	September 2012	
I.	December 2013	

Direct correspondence with Dealer:

4. During an inspection of the Dealer on or about January 24, 2014, Hendry was reminded of his requirements towards daily rental disclosure on vehicle advertisements.
5. On or about February 25, 2016 an OMVIC representative reminded Hendry of his requirements towards daily rental disclosure on vehicle advertisements.

Dealer non-compliance:

6. On or before January 24, 2019 the Dealer published the following advertisements which failed to indicate that the subject vehicles were former daily rental units. This is contrary to section 36(5) of Regulation 333/08 as well as sections 4 and 9 of the Code of Ethics.

	Vehicle	VIN
I.	2018 Dodge Grand Caravan	2C4RDGBG3JR175803
II.	2018 Jeep Grand Cherokee	1C4RJFBG8JC324363
III.	2018 Dodge Grand Caravan	2C4RDGDG9JR302633
IV.	2018 Dodge Grand Caravan	2C4RDGEG9JR242495

7. The Dealer has provided OMVIC with confirmation that the above purchasers were made aware of their vehicle's history, at the time of purchase, in writing on their bills of sale.
8. In failing to ensure the Dealer is conducting business in compliance with the law, Hendry has personally breached sections 6 and 9 of the Code of Ethics.

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

36. Advertising

(5) If any of the following is true of the motor vehicle, an advertisement that attempts to induce a trade in the specific vehicle shall indicate, in a clear, comprehensible and prominent manner, that the vehicle was previously,

- i. leased on a daily basis, unless the vehicle was subsequently owned by a person who was not a registered motor vehicle dealer. W



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

Disclosure and Marketing:

4. (2) 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.

Professionalism:

9. (3) A registrant shall use the registrant's best efforts to prevent error, misrepresentation, fraud or any unethical practice in respect of a trade in a motor vehicle.

It is thereby agreed that Hendry has breached the following sections 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.

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 \$4,000 no later than **April 10, 2020**.
2. Hendry agrees to successfully complete the MVDA Key Elements Course no later than **April 10, 2020**.
3. The Dealer agrees to offer all current and future sales staff the opportunity to complete the OMVIC Automotive Certification Course ("Course"). Current sales staff will be offered the Course no later than **April 10, 2020**. 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 after January 1, 2009, or who are otherwise required to do so pursuant to the Act.
4. The Dealer and Hendry agree to comply with the Act and Standards of Business Practice, as may be amended from time to time.



Decision of the Vice-Chair

Having reviewed and considered the Agreed Statement of Facts, the Vice-Chair of the Discipline Committee hereby concludes that the Dealer breached subsections 4, 6 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 Vice-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 \$4,000 no later than **April 10, 2020**.
2. Hendry is ordered to successfully complete the MVDA Key Elements Course no later than **April 10, 2020**.
3. The Dealer is ordered to offer all current and future sales staff the opportunity to complete the OMVIC Automotive Certification Course ("Course"). Current sales staff will be offered the Course no later than **April 10, 2020**. 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 after January 1, 2009, or who are otherwise required to do so pursuant to the Act.
4. The Dealer and Hendry 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



Stuart Sherman, Vice-Chair

