

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

BETWEEN:

REGISTRAR, *MOTOR VEHICLE DEALERS ACT, 2002*

- AND -

1395322 ONTARIO LIMITED o/a COLISEUM AUTO SALES

- AND -

NITIN (NICK) JAMNADAS PATEL

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: March 4, 2015

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

Order:

1. The Dealer is ordered to pay a fine in the amount of \$4,000 within 90 days of the Discipline Committee Order.
2. Patel is ordered to complete the OMVIC certification course ("course"), within 120 days of the date of the Discipline Committee Order. The Dealer will pay all costs associated with this.
3. The Dealer is ordered to offer all future sales staff the opportunity to complete the course. Current sales staff will be offered the course within 120 days of acceptance of this offer. Future sales staff will be offered the course within 120 days of being retained in this capacity by the Dealer. The Dealer will pay 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 shall comply with the *Motor Vehicle Dealers Act, 2002* 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. 1395322 Ontario Limited o/a Coliseum Auto Sales (the "Dealer") was first registered as a motor vehicle dealer in or around February 2000. Nitin Jamnadas Patel ("Patel") was first registered as motor vehicle salesperson in or around January 2002. At all material times, Patel was the sole officer and director of the Dealer.
2. In the winter of 2008 and the spring of 2009, OMVIC issued a Dealer Standard publication which highlighted some of the upcoming changes that would take place when the *Motor Vehicle Dealers Act, 2002* (the "Act") came into effect, such as all-in-pricing advertising rules.
3. Once the Act came into effect, the following Dealer Standard publications further reminded dealers of their obligations under the Act, such as the new all-in-pricing advertising rules:
 - a. Summer 2010
 - b. Spring 2011
 - c. Winter 2013
 - d. Spring 2013
 - e. Winter 2014
 - f. Spring 2014
4. Furthermore, OMVIC issued the following dealer bulletins which also reminded dealers of their obligations under the Act, such as the new all-in-pricing advertising rules:
 - a. December 2008
 - b. January 2010 (2 separate publications)
 - c. April 2010
 - d. June 2011
 - e. February 2012
 - f. August 2012
 - g. April 2014
5. By letter dated January 26, 2010, the Dealer was reminded of their obligations with respect to all inclusive advertising requirements. At this time the Dealer was provided with examples of compliant and non-compliant advertisements.



6. On or about August 23, 2010, as a result of advertisements placed by or on behalf of the Dealer, The Dealer pled guilty to 1 count of an advertising offence under section 36 of Regulation 333/08 of the Act.
7. By email dated July 4, 2012, the Dealer was reminded of their obligations with respect to all inclusive advertising requirements. At this time the Dealer was advised that his advertisements were not in compliance.
8. During an inspection on or about January 31, 2013, a representative met with Patel on behalf of the Dealer. At this time the Dealer was once again reminded of his obligations with respect to all inclusive advertising requirements.
9. On or before June 3, 2014, an advertisement was placed by or on behalf of the Dealer for a 2008 Nissan Altima, Stock # 14-388, with a sale price of \$9,950. On or about June 3, 2014, the Dealer sold this vehicle for \$54 over the advertised price. As such the advertisement did not promote an all-inclusive price, contrary to section 36(7) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics. The Dealer has subsequently reimbursed this purchaser \$54 plus HST.
10. On or before June 3, 2014, an advertisement was placed by or on behalf of the Dealer for a 2008 Ford F-150, Stock # 14-357, with a sale price of \$9,888. On or about June 3, 2014, the Dealer sold this vehicle for \$505 over the advertised price. As such the advertisement did not promote an all-inclusive price, contrary to section 36(7) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics. The Dealer has subsequently reimbursed this purchaser \$505 plus HST.
11. On or before June 12, 2014, an advertisement was placed by or on behalf of the Dealer for a 2011 Ford Transit Connect, Stock # 14-312, with a sale price of \$15,888. On or about January 3, 2014, the Dealer sold this vehicle for \$1005 over the advertised price. As such the advertisement did not promote an all-inclusive price, contrary to section 36(7) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics. The Dealer has subsequently reimbursed this purchaser \$1005 plus HST.

By failing to comply with the following regulation under the *Motor Vehicle Dealers Act, 2002*, 333/08:

Advertising

36(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 buy 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 Patel have breached the following sections of the Code of Ethics, as set out in Regulation 332/08:

4. A registrant shall be clear and truthful in describing the features, benefits and prices connected with the motor vehicles in which the registrant trades and in explaining the products, services, programs and prices connected with those vehicles.

9. 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 within 90 days of the Discipline Committee Order.
2. Patel agrees to complete the OMVIC certification course ("course"), within 120 days of the date of the Discipline Committee Order. The Dealer will pay all costs associated with this.
3. The Dealer agrees to offer all future sales staff the opportunity to complete the course. Current sales staff will be offered the course within 120 days of acceptance of this offer. Future sales staff will be offered the course within 120 days of being retained in this capacity by the Dealer. The Dealer will pay 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 agrees to comply with the *Motor Vehicle Dealers Act, 2002* 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 Patel breached subsections 4 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 \$4,000 within 90 days of the Discipline Committee Order.
2. Patel is ordered to complete the OMVIC certification course ("course"), within 120 days of the date of the Discipline Committee Order. The Dealer will pay all costs associated with this.
3. The Dealer is ordered to offer all future sales staff the opportunity to complete the course. Current sales staff will be offered the course within 120 days of acceptance of this offer. Future sales staff will be offered the course within 120 days of being retained



in this capacity by the Dealer. The Dealer will pay 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 shall comply with the *Motor Vehicle Dealers Act, 2002* and Standards of Business Practice, as may be amended from time to time.

Ontario Motor Vehicle Industry Council
Discipline Committee



Catherine Poultney, Chair

