

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 -

PICKARD LANE LEASING LTD.

- AND -

FRANK AMERATO

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: June 25, 2015

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

Order:

1. The Dealer is ordered to pay a fine in the amount of \$4,500 within 90 days of the date of the Discipline Committee Order. The fine is payable to the Ontario Motor Vehicle Industry Council.
2. Amerato is ordered to successfully complete the OMVIC certification course, within 90 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 current and future sales staff the opportunity to complete the course. Current sales staff will be offered the course within 90 days the date of the Discipline Committee Order. Future sales staff will be offered the course within 90 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 after January 1, 2009, or who are otherwise required to do so pursuant to the Act.
4. The Dealer and Amerato 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. Pickard Lane Leasing Ltd. (the "Dealer") was first registered as a motor vehicle dealer in or around April 1996. Frank Amerato ("Amerato") was first registered as a motor vehicle salesperson in or around December 1988. At all material times, Amerato was the officer and director of the Dealer.
2. During an inspection on or about November 4, 2009, the Dealer was reminded of their obligation to ensure to provide consumers with written disclosure of a vehicle's prior daily rental use.

Previous Discipline decision

3. On or about March 20, 2013, OMVIC issued a Notice of Complaint ("Notice") against the Dealer, regarding non-compliance of section 4 of the Code of Ethics, along with other issues.
4. On or about September 17, 2013, the above mentioned Notice was settled, pursuant to a negotiated resolution. As per condition 3, the Dealer agreed to ensure that all future advertising is in compliance with the MVDA and Standards of Business Practice and OMVIC Guidelines as may be amended from time to time. Furthermore, as per condition 4, the Dealer agreed to comply with the Code of Ethics and Standards of Business Practice.

Disclosure

5. On or about March 8, 2013, the Dealer took a 2005 Ford F-150 (VIN 1FTPW14555KC24661) in on trade. This vehicle had two separate collision claims in the amount of \$9,333 and \$3,302, and a non-collision claim in the amount of \$5,672. On or about March 19, 2013, the Dealer sold this vehicle without providing the purchaser with the disclosure above. This is contrary to sub sections 42(19) and 42(25), as well as sections 7 and 9 of the Code of Ethics. After the issuance of the Notice of Complaint, the Dealer has provided OMVIC with confirmation that the consumer is now fully aware of their pertinent vehicle history.
6. On or about March 2, 2014, the Dealer purchased a 2014 Dodge Caravan (VIN 2C4RDGDG1ER205061), declared as a former daily rental vehicle. On or about March 4, 2014, the Dealer sold this vehicle without providing the purchaser with the vehicles



former daily rental history. This is contrary to sub section 42(7), as well as section 7 and 9 of the Code of Ethics.

By failing to comply with the following regulations under the *Motor Vehicle Dealers Act, 2002*:

Disclosure

42. Additional information in contracts of sale and leases.

(7) If any of the following is true of the motor vehicle, a statement to the effect that the vehicle was previously,

i. leased on a daily basis, unless the vehicle was subsequently owned by a person who was not registered as a motor vehicle dealer under the *Motor vehicle Dealers Act* or the *Motor Vehicle Dealers Act, 2002*.

(19) If the total cost of repairs to fix the damage caused to the motor vehicle by an incident exceed \$3,000, a statement to that effect and if the registered motor vehicle dealer knew the total costs, a statement to that effect.

(25) Any other fact about the motor vehicle that, if disclosed, could reasonably be expected to influence the decision of a reasonable purchaser or lessee to buy or lease the vehicle on the terms of the purchase or lease.

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

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 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 \$4,500 within 90 days of the date of the Discipline Committee Order. The fine is payable to the Ontario Motor Vehicle Industry Council.
2. Amerato agrees to successfully complete the OMVIC certification course, within 90 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 current and future sales staff the opportunity to complete the course. Current sales staff will be offered the course within 90 days the date of the Discipline Committee Order. Future sales staff will be offered the course within 90 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 after January 1, 2009, or who are otherwise required to do so pursuant to the Act.

4. The Dealer and Amerato agree 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 Amerato breached subsections 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 \$4,500 within 90 days of the date of the Discipline Committee Order. The fine is payable to the Ontario Motor Vehicle Industry Council.
2. Amerato is ordered to successfully complete the OMVIC certification course, within 90 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 current and future sales staff the opportunity to complete the course. Current sales staff will be offered the course within 90 days the date of the Discipline Committee Order. Future sales staff will be offered the course within 90 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 after January 1, 2009, or who are otherwise required to do so pursuant to the Act.
4. The Dealer and Amerato 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

