

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 -

2257078 ONTARIO LTD o/a PAUL COFFEY KIA

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: January 31, 2018

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

Order:

1. The Dealer is ordered to pay a fine in the amount of \$5,000 no later than **December 8, 2017**.
2. 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 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.
3. The Dealer agrees 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. 2257078 Ontario Ltd o/a Paul Coffey Kia (the "Dealer") was first registered as a motor vehicle dealer in or around January 2011.
2. The salesperson involved in the transaction was first registered as a motor vehicle salesperson in or around February 2003. At all material times, he was employed in this capacity by the Dealer.
3. Whybuynewmotors Ltd is a registered motor vehicle dealer.
4. On or about December 12, 2016, a consumer negotiated the purchase of a 2013 Nissan Altima (VIN 1N4AL3APXDN428374) from Whybuynewmotors Ltd for a total price of \$12,000 plus HST. An initial bill of sale was executed between Whybuynewmotors Ltd and the consumer reflecting the agreed upon terms of purchase. The consumer paid for the licensing of the vehicle separately. The consumer was referred by Whybuynewmotors Ltd to the Salesperson to obtain financing for this purchase.
5. The transaction occurred as follows:
 - a. The Salesperson was able to obtain financing for the consumer. Whybuynewmotors Ltd sold the vehicle to the Dealer, who in turn sold the vehicle to the Consumer.
 - b. On or about December 13, 2016, the Consumer purchased the vehicle from the Dealer. The selling price of the vehicle had been increased to \$13,210 and the following additional charges were added to the consumer's bill of sale:
 - i. \$1499 Admin/GAP Protection
 - ii. \$399 Delivery
 - iii. \$150 gas
 - iv. \$150 licensing

The total price of the vehicle was now \$15,408 plus HST. This vehicle sale was non-compliant with industry regulations for the following reasons:

- v. The Consumer's copy of the bill of sale does not indicate the \$1499 administration fee includes GAP insurance. This is contrary to section

Registrant's Initials

40(2) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics.

- vi. Moreover, the Dealer charged the Consumer \$399 for delivery, \$150 for gas, and \$150 for licensing but did not deliver the vehicle to the Consumer. The Consumer took delivery of the vehicle from Whybuynemotors Ltd. At no time was the vehicle in the possession of the Dealer. As such, the Dealer charged the Consumer for costs not incurred; this is contrary to sections 4 and 9 of the Code of Ethics.
 - c. Ministry of Transportation records indicate the vehicle was transferred from the Whybuynemotors Ltd directly to the Consumer, without being registered to the Dealer. This is despite the fact Whybuynemotors Ltd sold the vehicle to the Dealer and the Dealer was the end retail seller. As such the Dealer failed to comply with its obligations under section 11(2) of the Highway Traffic Act, 1990, as well as section 9 of the Code of Ethics.
6. After OMVIC became involved in the Consumer's complaint, the Dealer offered partial restitution to the Consumer with respect to the additional costs that were charged.
 7. The Dealer permitted the Salesperson to engage in conduct on their behalf which contravenes the Act, Regulations, as well as sections 4 and 9 of the Code of Ethics.
 8. The Salesperson involved is no longer employed by the Dealer.
 9. The Dealer has since agreed to refund the Consumer the \$2,198 in extra charges that the Consumer paid.

By failing to comply with the following:

Highway Traffic Act, 1990

11(2) Every person shall, within six days after becoming the owner of a motor vehicle or trailer for which a permit has been issued, apply to the Ministry, on the form provided therefor, for a new permit for the vehicle.

Motor Vehicle Dealers Act, 2002

Regulation 333/08

40(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:

Registrant's Initials

An itemized list of the charges that the purchaser is required to pay under the contract to conclude the transaction, including charges for freight, charges for inspection before delivery of the vehicle, fees and levies.

It is thereby agreed that the Dealer has 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 \$5,000 no later than **December 8, 2017**.
2. 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 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.
3. The Dealer agrees to comply with the Act and Standards of Business Practice, as may be amended from time to time.

Registrant's Initials

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 section 4 and 7 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 no later than **December 8, 2017**.
2. 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 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.
3. The Dealer agrees 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



Paul Burroughs, Chair