

## 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*  
("OMVIC")

- AND -

GOUROV, VALERI O/A MASTER  
("Registrant")

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**Date of Hearing:** April 28, 2015

**Date of Decision:** May 26, 2015

**Findings:**

The Registrant failed to comply with Sections 42(22) and 59(3) of Ontario Regulation 332/08 and therefore breached Sections 7 and 9 of the Code of Ethics.

**Order:**

1. Valeri Gourov is ordered to attend in person, and successfully complete, the OMVIC certification course within 90 days of the date that this Discipline Committee Order is signed. Mr. Gourov shall incur all associated costs.
2. Valeri Gourov is ordered to attend in person (if an in-class session of this course is available), and successfully complete, the Record Keeping for Motor Vehicle Dealers course within 180 days of the date that this Discipline Committee Order is signed. If an in-class session is not available, Valeri Gourov must nonetheless complete the course on-line. Mr. Gourov shall incur all associated costs.
3. The Registrant is ordered to pay a fine in the amount of \$5,000.00 in the following instalments:
  - \$1,500.00 within 90 days of the date that this Discipline Committee Order is signed; and
  - the remaining two payments of \$1,750.00 each are due within 90 days of the previous payment.



### Decision and Reasons

This matter proceeded before a Panel of the Discipline Committee pursuant to Section 17 of the Motor Vehicle Dealer Act 2002.

Counsel, Michael Rusek, represented OMVIC.

The Registrant, Mr. Valeri Gourov, was present and represented himself and his dealership, which operates under the business name, "Master".

The Panel consisted of Jennifer Cooper (Chair), Stuart Sherman and Thomas Kramer. Luisa Ritacca attended as Independent Legal Counsel to the Panel.

During the hearing the Panel received the following documents, which were accepted and marked as exhibits:

Exhibit 1: Notice of Complaint dated October 1, 2014.

Exhibit 2: Customer Letters (6 letters)

#### Notice of Complaint

The Notice of Complaint (Exhibit 1) was provided to the Panel at the commencement of the hearing and sets out as follows:

1. Gourov, Valeri o/a Master (the "Dealer") was first registered as a motor vehicle dealer in or around July 1999. At all material times, Valeri Gourov was the person in charge at the Dealer.
2. On or about July 20, 1999, the Dealer signed terms and conditions, attached hereto as schedule "A". As per condition K, the Dealer agreed it is under positive obligation to all material facts about a vehicle it sells.
3. 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. In addition to this, dealers were reminded of their obligation to provide consumers with written disclosure of vehicle's history and condition, previous out of province registrations and daily rental history.
4. Once the Act came into effect, the following Dealer Standard publications further reminded dealers of their obligations to provide consumers with written disclosure of vehicle's history and condition, previous out of province registrations and previous daily rental history:
  - a. Summer 2011
  - b. Summer 2012
  - c. Winter 2013
  - d. Fall 2013



5. Furthermore, OMVIC issued the following dealer bulletins that which also reminded dealers of their obligations to provide consumers with written disclosure of vehicle's history and condition, previous out of province registrations and previous daily rental history.
  - a. December 2008
  - b. September 2012
  - c. December 2013
6. During and inspection on or about October 20, 2008, a representative of the Registrar reminded the Dealer to provide purchasers with written disclosure of all material facts about the vehicle it sells.
7. During an inspection on or about August 31, 2010, a representative of the Registrar reminded the Dealer to provide purchasers with written disclosure of all material facts about the vehicles it sells. At this time the representative also reviewed with the Dealer the relevant sections of Regulation 333/08.
8. On or about August 8, 2011, the registrar issued a Notice of Proposal to revoke the registration of the Dealer, attached hereto as schedule "B".
9. On or about September 17, 2012, the Licence Appeal Tribunal issued a Consent Order, pursuant to a negotiated resolution of the above-mentioned Notice of Proposal. Attached hereto as schedule "C" is a copy of the Order. The Order required: As per condition 21, the Dealer agreed that it is under positive obligation to disclose, in writing on the bill of sale, all material facts about a vehicle it sells, including but not limited to, previous daily rental history. As per condition 30, the Dealer agreed to maintain a bank account in accordance with section 59 of Ontario Regulation 333/08.
10. On or before August 20, 2013, the Dealer purchased a 2010 Toyota Highlander (VIN 5TDBK3EHXAS031161), declared as being previously registered in the United States. On or about August 20, 2013, the Dealer sold this vehicle without providing the purchaser with written disclosure of the vehicle's out of province history. Furthermore, the Dealer failed to process the funds relating to this sale through its bank account. This is contrary to section 42(22) and 59(3) of the Regulation 333/08, as well as section 7 and 9 of the Code of Ethics.
11. On or about August 13, 2013, the Dealer purchased a 2011 Toyota Rav 4 (VIN 2T3DK4DVXBW056311). This vehicle was previously registered North Carolina, United States. On or about August 26, 2013, the Dealer sold this vehicle without providing the purchaser with written disclosure of the vehicle's out of province history. Furthermore, the Dealer failed to process the funds relating to this sale through its bank account. This is contrary to section 42(22) and 59(3) of Regulation 333/08, as well as section 7 and 9 of the Code of Ethics.
12. On or about September 4, 2013, the Dealer purchased a 2012 Toyota Corolla (VIN 2T1BU4EE9CC825683), declared as a previous daily rental vehicle. On or about September 9, 2014, the Dealer sold this vehicle without providing the purchaser with written disclosure of the vehicle previous daily rental history. Furthermore, the Dealer failed to process the funds from relating to this sale through its bank account. This is



contrary to section 42(7) and 59(3) of Regulation 333/08, as well as section 7 and 9 of the Code of Ethics.

13. On or before September 18, 2013, the Dealer purchased a 2009 Nissan Versa (VIN 3N1BC13E99L493886). This vehicle was previously registered in Quebec. On or about September 18, 2013, the Dealer sold this vehicle without providing the purchaser with written disclosure of the vehicle's out of province history. Furthermore, the Dealer failed to process the funds relating to this sale through its bank account. This is contrary to section 42(22) and 59(3) of Regulation 333/08, as well as section 7 and 9 of the Code of Ethics.
14. On or before October 3, 2013, the Dealer purchased a 2010 Lexus RX 350 (VIN JTJBK1BAXA2415277). This vehicle was previously registered in Quebec. On or about October 3, 2013, the Dealer sold this vehicle without providing the purchaser with written disclosure of the vehicle's out of province history. Furthermore, the Dealer failed to process the funds relating to this sale through its bank account. This is contrary to section 42(22) and 59(3) of Regulation 333/08, as well as section 7 and 9 of the Code of Ethics.
15. On or before November 18, 2013, the Dealer purchased a 2008 Hyundai Santa Fe (VIN 5NMSG13E28H132285), declared as being previously registered in New Brunswick. On or about November 18, 2013, the Dealer sold this vehicle without providing the purchaser with written disclosure of the vehicle out of province history. Furthermore, the Dealer failed to process the funds relating to this sale through its bank account. This is contrary to section 42(22) and 59(3) of Regulation 333/08, as well as section 7 and 9 of the Code of Ethics.

### **Withdrawal of Allegation**

At the commencement of the hearing, counsel for OMVIC sought the Panel's permission to withdraw the allegation set out at paragraph 12 of the Notice of Complaint. The Registrant did not oppose the request. As such, the allegation was withdrawn as requested.

### **Plea**

The Panel was advised that the Registrant was not disputing the facts set out in the Notice of Complaint and would be pleading guilty to the allegations contained therein.

The Chair, noting that the Registrant was self represented, conducted a comprehensive plea inquiry to ensure that the Registrant's admissions were voluntary, informed and unequivocal. In addition to several questions posed to the Registrant, including whether he understood the allegations, the consequences of admitting same and that the penalty imposed could include a fine, re-education and legal costs, the Chair also read each allegation set out in the Notice of the Complaint (paragraphs 10 through 15 excluding paragraph 12). The Registrant confirmed, after each allegation was read, that the information was correct and he admitted the facts contained therein.

The Panel was satisfied that the Registrant's admissions were informed, unequivocal and voluntary, and therefore accepted his plea of guilty.



### **Evidence on the Merits:**

OMVIC relied solely on the Notice of Complaint and the Registrant's admissions in seeking the findings of guilt as alleged.

The Registrant did not dispute the facts as alleged and agreed that a finding could be made.

### **Decision and Reasons of the Panel:**

Based on the facts contained in the Notice of Complaint and the Registrant's voluntary admission that the facts contained therein are accurate, the Panel is satisfied that the facts as they appear represent violations of sections 42(22) and 59(3) of Regulation 332/08.

Section 42(22) indicates that if a motor vehicle was previously registered in a jurisdiction other than Ontario a statement to that effect and a statement of which jurisdiction(s) shall be provided to the purchaser. There is an exception to this requirement but it did not apply in the transactions relevant to this case.

The facts contained in the Notice of Complaint, and the Registrant's voluntary admissions confirms that on five separate occasions the Registrant sold vehicles that had been registered in a jurisdiction outside of Ontario (out of province) without including a statement to that effect when such a statement was in fact required.

Section 59 (3) stipulates that a registered motor vehicle dealer shall ensure that, all amounts that the dealer receives in connection with a trade in a motor vehicle are deposited in a non-trust account, held in the legal name of the registered motor vehicle dealer.

The facts contained in the Notice of Complaint and the Registrant's voluntary admissions confirms that on five separate transactions, the Registrant failed to comply with this Regulation.

Sections 7 of the Code of Ethics as set out in Regulation 332/08, made under the *Motor Vehicle Dealers Act, 2002* ('the Code') states that a registrant shall ensure that all documents used by the registrant in the course of a trade in a motor vehicle are current and comply with the law. As the evidence and the Panel has found that the has determined that the Registrant's Bills of Sale was deficient and not in compliance with the law, the Registrant is in breach of Section 7.

Section 9 of the Code focuses on professionalism required of all registrants. This section emphasizes that in carrying on business a registrant shall not engage in any act of omission that would reasonably regarded as dishonourable or unprofessional. It also focuses on the requirement to act with honesty, integrity and fairness and to use beset efforts to prevent misrepresentation, fraud or any unethical practices. Finally, this section of the Code highlights the requirement that a registrant provide conscientious service, and demonstrate knowledge, skill, judgment and competence.

The failures of the Respondent to provide fulsome written disclosure and properly process payments demonstrate a lack of professionalism and a breach of section 9 of the Code.

The Panel notes that the Notice of Complaint included as "Schedule B" a document entitled Notice of Proposal to Revoke Registration. The document provided details about underlying facts that gave rise to a Consent Order issued by the License Appeal Tribunal on September



17, 2013. This information was not relevant to the Panel's determination on the merits of the allegations in this matter. In the future, counsel for OMVIC may consider introducing similar evidence after a decision has been rendered on the merits and not prior.

### **Submissions on Penalty**

#### **OMVIC**

OMVIC called one witness, Andrea Korth, Business Standards Co-ordinator, to testify during the penalty phase of the hearing.

Ms. Korth gave evidence on the importance of the obligation of fulsome disclosure by dealers to its customers in relation to OMVIC's mandate.

Mr. Rusek submitted that a reasonable and appropriate penalty in this case should reflect the regulatory nature of the Act and Regulations, and its objectives. The legislation requires dealers to adhere to specific rules and regulations designed to protect the public.

Mr. Rusek argued that the chronology of facts admitted discloses a similar pattern of non-disclosure in the Bill of Sale and OMVIC's reminders to the Registrant of his obligation to disclose this information in writing. Mr. Rusek highlighted the fact that this was not the first time the Registrant has faced sanctions for this type of conduct. As a result of a Notice of Proposal to Revoke Registration that was issued in August 2011 for, among other things, the Registrant's alleged failure to make full written disclosure to his customers, a Consent Order was issued. The Order was issued pursuant to a settlement agreement, which included, an acknowledgment on the part of the Registrant that he is under positive obligation to disclose, in writing on the bill of sale, all material facts about a vehicle it sells. The Registrant also agreed to maintain a bank account in accordance with section 59 of Ontario Regulation 333/08.

It was also noted by Mr. Rusek that OMVIC has conducted several campaigns to educate its members of their legal obligations. Mr. Rusek submitted that this was not an issue of lack of proper knowledge on the part of the Registrant of his obligations but that he simply chose not to comply with the rules.

Mr. Rusek provided the Panel with two recent OMVIC discipline committee decisions to consider. The first is REGISTRAR, MOTOR VEHICLE DEALER ACT 2012 AND MAPLE LEAF AUTOS INC. AND MUSHTAQ KHAN. This matter was decided following a contested hearing. This case Mr. Rusek submitted involved 3 vehicles and the facts represent similar circumstances. The fine ordered was \$4,500.00.

The second is REGISTRAR, MOTOR VEHICLE DEALER ACT 2012 AND EMMANUEL NITRI O/A EDLAVI MOTORS. This decision is based on Agreed Statement of Facts and a Joint Submission on Penalty. This case involves 4 vehicles. Mr. Rusek submits that the facts represent similar circumstances. The fine ordered was \$7,000.00.

Both cases include breaches of sections 7 and 9 of the Code of Ethics. The cases were presented as a yardstick to determine the range of penalties that may be imposed, the range being \$1,500.00 and \$1,750.00 per count for similar breaches.



Mr. Rusek submitted that the appropriate penalty in the circumstances should be as follows:

- Registrant shall pay a fine of \$7,500.00
- Registrant shall complete the current OMVIC certification course within 90 days
- Registrant shall complete the Record Keeping for Motor Vehicle Dealers course

He further submitted that the amount requested satisfies the requirement of specific deterrence to the Registrant. The fine is sufficiently high enough that it will not be seen as being just the cost of doing business. Mr. Rusek also submitted that the fine will also act as a general deterrent to other registrants and will aid in preventing harm to consumers.

## **Registrant**

The Registrant testified on his own behalf with respect to penalty.

The Registrant acknowledged that he requires further education and agreed that the educational component sought by OMVIC was reasonable. Although the Registrant did not stipulate a specific monetary amount of fine, which was acceptable, he did express that he would have extreme difficulty paying any amount ordered.

The Registrant testified that he works alone and sells one or two vehicles a month. With respect to OMVIC's allegation that he has a pattern of not complying with the requirement to disclose material facts in writing to his consumers, the Registrant indicated that when OMVIC brought to his attention a specific material fact that he had failed to disclose he corrected his behavior. The Registrant cited as an example that in the past he was advised to ensure that the proper odometer meter be disclosed. Once he was advised of this requirement he complied. On another occasion he was advised by OMVIC to ensure that proper "as is" disclosure was on the bill of sale. Again, once advised, the Registrant submits that he complied. However, on cross-examination, the Registrant agreed that in each instance he had failed to disclose certain material facts in writing to his customers.

The Registrant admitted the facts as set out in the Notice of Complaint. He acknowledged that he did not provide his customers with written disclosure at the time of the five purchase transactions described in the Notice of Complaint. Although the Registrant admitted that his conduct was contrary to Regulation 333/08, the Registrant maintained that each of his customers were aware of the vehicle's out of province history, as he advised them orally at the time of the purchase.

The Registrant provided letters (Exhibit 2), which are purported to be from 5 of 6 customers that were involved in the subject transactions. In each letter, the customer indicates that he/she was informed at that time of the transaction of the vehicle's out of province history.

The Registrant acknowledged, during cross examination, that all letters were obtained after the Notice of Complaint date October 1, 2014 was issued and not at the time of sale.

The Registrant also admitted that he failed to process the funds related to the five subject transactions through his business bank account. The Registrant indicated that he did not process the transactions as required because the bank would not release the funds until the cheque cleared which would often take over 48 hours. As he was purchasing the vehicles at



auction, he required the funds immediately. The Registrant explained that to avoid the delay from the banking hold he chose not to process the funds through his account.

### **Decision on Penalty**

Upon careful review of the evidence presented and having assessed the totality of the circumstances, the panel determined that a fine of \$5,000.00 (payable in instalments noted above) shall be ordered. In addition, the Registrant is ordered to successfully complete OMVIC's certification and Record Keeping for Motor Vehicle Dealers courses (as per the details outlined above).

### **Reasons for Penalty:**

The Panel in reaching the decision to order a fine of \$ 5,000.00 fully considered all the evidence and arguments presented by both parties. The purpose behind the implementation of legislation requiring the disclosure of a vehicle's previous out-of-province registration is protection of the consumer. Pursuant to the Regulations, a consumer may cancel a sales contract if this information is not disclosed. As such, it is apparent that the importance of disclosing such pertinent information is paramount.

The obligation to maintain a bank account is also important to ensure that consumers' funds are documented and accounted for on each transaction.

The evidence demonstrates that the Registrant was aware of his obligations to disclose, was reminded of these same obligations on more than one occasion, yet failed to disclose the required information in writing as required. The Registrant has a positive duty to be aware of his obligations under the Regulations and this includes to know what constitutes a "material fact" that must be disclosed. Self-regulation is a privilege, not a right, and all Registrants have to educate themselves on his/he obligations in that regard. The Panel is satisfied that the Registrant was given sufficient opportunity and considerable time to ensure compliance, but he failed to do so.

The Panel has considered the letters from the Registrant's customers acknowledging that they were aware of each vehicle's history at the time of purchase and that there is no evidence of consumer harm. However, this does not negate the fact that he is in breach and protection of the public mandates written disclosure.

Given these findings, the Panel determined that the penalty must be significant enough to be a hardship on the Registrant and deter other registrants in similar circumstances from engaging in this type of conduct.

The Panel is aware that the Registrant's dealership is not a high volume business and accepts his submission that he is under certain financial constraints. It is for this reason that the Panel ordered a fine of \$5,000.00, to be paid in instalments, rather than the \$7,500.00 requested by OMVIC. It should be clear that if the Registrant had a high volume business, the penalty would have been significantly greater. The fact that the Registrant admitted the allegations at the outset of the hearing was also a mitigating factor in this case.

The Panel considered the education component to be of significant importance given the Registrant's on going apparent lack of understanding regarding his obligations to disclose and

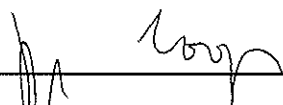




importance of maintaining a bank account and appropriate records. The Panel's decision to require the Registrant to successfully complete both courses is to ensure this knowledge gap is filled.

In conclusion, the Panel is satisfied that the totality of the Order is significant enough to act as a specific deterrent to the Registrant, a general deterrent to others in the industry and offers improved competence and rehabilitation in the form of education.

Ontario Motor Vehicle Industry Council  
Discipline Panel



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*Jennifer Cooper, Chair*  
*Stuart Sherman, Vice Chair*  
*Thomas Kramer, Vice Chair*

