

DISCIPLINE DECISION

REVIEWING PANEL: Debra Mattina, Public Member
Joe Wade, Registrant
Paul Burroughs, Registrant

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-

NORTHWESTERN AUTO SALES LTD.

-AND-

RICHARD LAPOINTE

Pursuant to Rule 1.07 of the Rules of Practice before the Discipline Committee and the Appeals Committee, a Reviewing Panel has 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: December 15, 2023

Findings: The Dealer has contravened the following:

Sections 7(1) and 9(3) of the Code of Ethics, Ont. Reg. 332/08

Richard Lapointe has breached the following:

Sections 6(2) and 9(3) of the Code of Ethics, Regulation 332/08

Order:

1. Northwestern Auto Sales Ltd. (the "Dealer") is ordered to pay a fine in the amount of **\$2,500** no later than **January 31, 2024**
2. 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 no later than

January 31, 2024. 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.

3. The Dealer and Lapointe agree to comply with the Act, the Code of Ethics, and Standards of Business Practice, as may be amended from time to time.

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.

Background:

1. Northwestern Auto Sales Ltd. (the "Dealer") was first registered as a motor vehicle dealer in or around December 2010.
2. Richard Lapointe ("Lapointe") was first registered as a motor vehicle salesperson in or around October 1988. At all material times, Lapointe has been the person in charge of the day to day activities of the Dealer.
3. On or about December 15, 2010, Lapointe executed terms and conditions of registration on behalf of the Dealer. Per condition 22, the Dealer agreed to provide its purchasers with written disclosure on the bill of sale of all material facts concerning the vehicles it sells.

OMVIC publications re: material fact disclosure:

4. Since the Act was proclaimed, OMVIC has issued numerous publications and webinars reminding dealers of their disclosure obligations including but not limited to, the requirement to disclose the dollar value of a vehicle's accident damage history. All of these publications continue to be available on OMVIC's website.

Direct correspondence with Dealer:

5. During an inspection of the Dealer on or about June 4, 2021, a representative of the Registrar reviewed with Lapointe the Dealer's disclosure requirements, pursuant to section 42 of Ont. Reg. 333/08.
6. By letter dated September 16, 2021, Lapointe was reminded of the Dealer's disclosure requirements, as per section 42 of Ont. Reg. 333/08.

Dealer's current contraventions:

7. On or about March 24, 2022, Lapointe sold a 2012 Ford Focus (VIN 1FAHP3F24CL158522) on behalf of the Dealer. This vehicle had twelve previous and separate accident or incident histories, two of which resulted in damage in the amounts of \$5,037.10 and \$5,549.54. The Dealer failed to disclose on the bill of sale the dollar value of the previous accident damages. This is contrary to sections 42(19) and 42(25) of Ont. Reg. 333/08, as well as sections 7(1) and 9(3) of the Code of Ethics.
8. On or about May 13, 2022, the consumer contacted OMVIC to complain about the condition of the vehicle and the Dealer's failure to properly disclose the above noted information at the time of purchase. The Dealer was agreeable to resolving the matter through OMVIC; however, after months of negotiations the consumer became unresponsive.

Recent OMVIC Inspection

9. On or about October 17, 2023, a representative of the Registrar conducted an inspection of the Dealer's books and records. As a part of the inspection findings, it was noted that the Dealer appeared to have implemented a new process to ensure it complies with its disclosure obligations and prior damages regarding the vehicles it sells, are disclosed in writing on the bill of sale.

Lapointe's contravention of the Code of Ethics:

10. Lapointe failed to ensure that the Dealer conducts its business in compliance with the Regulations and Code of Ethics and has therefore personally contravened sections 6(2) and 9(3) of the Code of Ethics.

DISPOSITION:

By failing to comply with the following sections of Ont. Reg. 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:

1. The matters required under paragraphs 1 to 3, 5 to 10, 14 to 19 and 21 to 27 of subsection 39 (2) [...]

42. For the purposes of section 30 (1) of the Act, the information mentioned in paragraph 22 of subsection 39 (2) and paragraph 11 of subsection 41(1) of this Regulation is the following:

(19) If the total costs 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 of the total costs.

(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 has contravened the following section of the Code of Ethics:

Compliance:

7. (1) 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.

It is thereby agreed that the Dealer and Lapoint have contravened the following section of the Code of Ethics:

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 Lapoint has contravened the following section of the Code of Ethics:

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.

Decision of the Reviewing Panel

Having reviewed and considered the Agreed Statement of Facts, as well as the additional submissions provided by the Parties, the Reviewing Panel is satisfied that the facts as set out in the Agreed Statement of Facts support the allegations that the Dealer has breached subsections 7(1) and 9(3) of the OMVIC Code of Ethics, and Lapointe has breached subsections 6(2) and 9(3), as set out in Ontario Regulation 332/08, made under the *Motor Vehicle Dealers Act, 2002*.

The panel noted during deliberations on penalty a number of factors that informed their decision.

The first of these is that this is not a newly registered Dealership. It is the opinion of the panel that a Dealership that has been operating for well over a decade should understand and adhere to the provisions of disclosure. The panel reviewed the facts as agreed to and were concerned with the Dealerships' failure to disclose material facts with regard to the vehicles' accident damage history. Specifically in the panel's opinion there is no excuse for nondisclosure of facts relating to previous damage to a vehicle of more than \$3000. In this particular case the vehicle in question had a history of multiple prior accidents, two of which had damages in excess of \$5000 each.

The regulations regarding disclosure are intended to provide the prospective purchaser with all the relevant information material to making an informed decision. This would also include all known accident history. In this case there were 10 known prior accidents. The panel is of the opinion that complete disclosure of the vehicle history in this particular sales transaction could well have been the determining factor in the consumers decision of whether or not to purchase the vehicle had the information been provided to them prior to the purchase.

In the panels opinion this assertion is demonstrated by the Dealers' efforts to make the Consumer "whole" by returning some of the money.

The panel holds that this sort of vehicle history data must be provided to the consumer prior to any agreement of sale as set out in the MVDA (Motor Vehicle Dealers Act), the purpose of which is to provide consumer protection by ensuring dealerships abide by the terms set out in the regulations.

The panel acknowledges that the Dealer did make some efforts to compensate the consumer, in effect providing some reduction of harm. The panel therefore accepts that some measurable relief was provided to the consumer and acknowledges this would be considered as a mitigating factor at a hearing.

The panel is of the opinion that the penalty provided for in this agreement is on the lower end of the current penalty range. The panel had concerns that in this case the monetary portion of the penalty does somewhat challenge the goal of specific deterrence. However, the panel accepts that the Dealer's efforts to provide some remedy to the consumer assisted the panel in accepting the penalty despite their reservations of it being on the low side. With that caveat the panel accepts that the penalty meets the goals of specific deterrence.

The panel had concerns that penalties that appear too lenient have the potential to undermine consumer confidence. Had this matter gone to hearing this panel believes the Hearing Panel would almost certainly have imposed a higher penalty in light of the egregious omission of known vehicle history. The panel maintains that penalty cannot be seen to be the "cost of doing business". Penalties are meant to send a message incentivizing behavioral reform. The panel encourages Counsel to negotiate more meaningful penalties in these matters.

Under the given circumstances, as this is a first time offense committed by a small dealership the panel accepts the monetary portion of the penalty as adequate. The panel also makes note that the bar to go behind a joint submission on penalty (JSOP) is very high, therefore the panel accepts the JSOP.

This Reviewing Panel therefore agrees with the Parties' Joint Submission on Penalty and determines that the penalty is in the public interest and serves as a general and specific deterrence. Accordingly, the Reviewing panel makes the following Order:

1. Northwestern Auto Sales Ltd. (the "Dealer") is ordered to pay a fine in the amount of **\$2,500** no later than **January 31, 2024**

2. 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 no later than **January 31, 2024**. 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.
3. The Dealer and Lapointe agree to comply with the Act, the Code of Ethics, and Standards of Business Practice, as may be amended from time to time.

Ontario Motor Vehicle Industry Council
Discipline Committee

Dated: January 24, 2024

A handwritten signature in black ink, appearing to read 'Joe Wade', is written over a horizontal line. The signature is stylized with a large loop on the left side.

Joe Wade, *Discipline Committee Chair*

On behalf of
Debra Mattina, *Public Member*
Paul Burroughs, *Member*

