



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 -

WHITE STAR AUTO SALES & SERVICE LIMITED

- and -

DEVINDER SANGHERA

Date of Hearing: April 10, 2014

Date of Decision: April 25, 2014

Introduction

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

The Registrar was represented by Elizabeth Maishlish. The registrant, Devinder Sanghera, was present and unrepresented. Mr. Sanghera also appeared on behalf of the registrant White Star Auto Sales & Service Limited, which was unrepresented. The Panel consisted of Debra Mattina (Chair), Bruce Wilson (Vice-Chair), and Murray Clark (Vice-Chair). Aaron Dantowitz attended as Independent Legal Counsel to the Panel.

The panel marked the Notice of Complaint as Exhibit #1, the book of documents as Exhibit #2, the Agreed Statement of Facts¹ as Exhibit #3 and the Joint Submission on Penalty as Exhibit #4.

The Agreed Statement of Facts (Exhibit #3) provides as follows:

White Star Auto Sales & Service Limited and Devinder Sanghera have breached the following:

Section 7 of the Code of Ethics, Regulation 332/08

¹ The document was entitled "Agreed Statement of Fact and Penalty", but did not address the question of penalty.



Section 9 of the Code of Ethics, Regulation 332/08

SUMMARY OF AGREEMENT

The parties to this proceeding agree that:

1. White Star Auto Sales & Service Limited (the "Dealer") was first registered as a motor vehicle dealer in or around June 1999. Devinder Sanghera ("Sanghera") was first registered as motor vehicle salesperson in or around June 1999. At all material times, Sanghera was the officer and director of the company.
2. In the winter of 2008 OMVIC issued a Dealer Standard warning dealers that the new Motor Vehicle Dealers Act, 2002 will become law. This issue also warned dealers that disclosures must be made on contracts. For example, if a vehicle was a former daily rental, was involved in an incident and suffered more than \$3,000 in damage (the amount of damage must also be disclosed) or if there has been any structural damage repairs or alterations to a vehicle.
3. In or around December 2008, OMVIC issued a bulletin reminding dealers of the new disclosure requirements under the Act.
4. In or around January 2010, OMVIC issued a bulletin reminding dealers that changes must be made on their bills of sales to accommodate disclosure requirements as per the new Act.
5. On or about October 21, 2008, the Dealer purchased a 2005 Toyota Corolla (VIN 2T1BR32E65C884256). This vehicle is accident repaired. On or about November 11, 2011, the Dealer sold this vehicle without providing the purchaser with written disclosure of the vehicle's accident repair history in the amount of \$6,399, contrary to section 42(19) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. Furthermore, the retail bill of sale failed to contain the required information as per section 40 of Regulation 333/08, as well as section 7 of the Code of Ethics.
6. On or about May 10, 2011, the Dealer purchased a 2007 Nissan Versa (VIN 3N1BC13E47L427887). This vehicle is accident repaired. On or about November 19, 2011, the Dealer sold this vehicle without providing the purchaser with written disclosure of the vehicle's accident repair history in the amount of \$4,386, contrary to section 42(19) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. Furthermore, the retail bill of sale failed to contain the required information as per section 40 of Regulation 333/08, as well as section 7 of the Code of Ethics.



7. On or about November 8, 2011, the Dealer purchased a 2007 Nissan Versa (VIN 3N1BC13E57L359728), disclosed with structural damage. On or about November 28, 2011, the Dealer sold this vehicle without providing the purchaser with written disclosure of the vehicle's structural damage, this is contrary to section 42(10) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. Furthermore, the retail bill of sale failed to contain the required information as per section 40 of Regulation 333/08, as well as section 7 of the Code of Ethics.
8. On or about June 20, 2012, the Dealer sold a 2005 GMC Safari (VIN 1GTDM19X75B507579). The retail bill of sale failed to contain the required information as per section 40 of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. Furthermore this vehicle was sold "As Is" but did not include the required "As Is" statement, accompanied with the consumer's initials contrary to section 40(5) of regulation as well as section 7 of the Code of Ethics.
9. On or about August 25, 2012, the Dealer sold a 1999 Ford Ranger (VIN1FTYR10U2XPA90674). The retail bill of sale failed to contain the required information as per section 40 of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. Furthermore this vehicle was sold "As Is" but did not include the required "As Is" statement, accompanied with the consumer's initials contrary to section 40(5) of regulation as well as section 7 of the Code of Ethics.
10. On or about August 15, 2012, the Dealer purchased a 2003 Suzuki Aerio (VIN JS2RD41H935202937), disclosed as accident repaired. On or about August 31, 2012, the Dealer sold this vehicle without providing the purchaser with written disclosure of accident repair history in the amount of \$6,493, contrary to section 42(19) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. Furthermore, the retail bill of sale failed to contain the required information as per section 40 of Regulation 333/08, as well as section 7 of the Code of Ethics.

By failing to comply with the following sections of the *Motor Vehicle Dealers Act, 2002*:

Regulation 333/08:

40 (5) If a dealer is selling the vehicle on an as-is basis, a statement in accordance with subsection (6) in 12 point bold font, except for the heading which shall be in 14 point bold font, where the purchaser initials the statement.

42 (7) 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:

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*,
- ii. used as a police cruiser or used to provide emergency services, or
- iii. used as a taxi or limousine.

42 (10) If there has been structural damage to the motor vehicle or any repairs, replacements or alterations to the structure of the vehicle, a statement to that effect.

42 (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.

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

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.

7. (2) A registered motor vehicle dealer who enters into a contract with a person for the sale of a motor vehicle shall facilitate compliance by the person with the person's obligations under subsection 11(2) of the *Highway Traffic Act* unless the person instructs the dealer not to do so.

9. (1) 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.

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.

Counsel for the Registrar confirmed that the Registrar was not proceeding on all of the particulars of the Notice of Complaint, and that Tabs 17 and 18 of the document book (Exhibit 2) should be disregarded by the panel.



Findings:

Breach of sections 7 and 9 of the Code of Ethics, Regulation 332/08. Breaches of sections 40, 42(10) and 42(19) of Regulation 333/08.

Decision of the Panel.

Having reviewed and considered the admissions of the Respondent to the allegations contained in the Notice of Complaint dated May 29, 2013 and the Agreed Statement of Fact, the Panel of the Discipline Committee hereby concludes that White Star Auto Sales & Service Limited and Devinder Sanghera have breached subsections 7 and 9 of the Code of Ethics, as set out in Ontario Regulation 332/08, made under the Motor Vehicle Dealers Act, 2002. The Panel also found that White Star Auto Sales & Service and Devinder Sanghera breached sections 42(10), 42(19) and 40 of Ontario Regulation 333/08.

The panel makes no finding of any breach with respect to particulars 8 and 9 of the Notice of Complaint, which were not pursued by the Registrar.

Reasons for Decision:

The panel is satisfied that paragraphs 5, 6, 7, 8, 9, and 10 of the Agreed Statement of Fact support findings of the violation of the principles of the Code of Ethics sections 7 and 9.

The Panel is also satisfied that the facts represent violations of sections 42(10), 42(19) and 40 of Ontario Regulation 333/08. White Star Auto Sales & Service Limited and Devinder Sanghera sold vehicles without disclosing in writing accident damage in excess of \$3,000 contrary to Section 42(19) of the O. Reg. 333/08 as supported by paragraphs 5, 6 and 10 of the Agreed Statement of Fact. White Star Auto Sales & Service Limited and Devinder Sanghera breached section 42(10) of the O. Reg. 333/08 by failing to provide required written disclosure of structural damage as demonstrated in paragraph 7 of the Agreed Statement of Fact. The Respondents failed to provide written disclosure on the bill of sale, information required under section 40 of the O. Reg. 333/08 when selling a vehicle "as is", which is demonstrated in paragraphs 8 and 9 of the Agreed Statement of Facts.

The Panel of the Discipline Committee received a signed Agreed Statement of Facts dated April 10, 2014. The panel also performed an oral plea inquiry taking great care to confirm the Respondent understood the agreement and the circumstances relating to the Panels' options regarding such agreements. The Panel of the Discipline Committee is satisfied that the admissions contained in the Agreed Statement of Facts were voluntary, informed and unequivocal.

The panel is therefore satisfied that White Star Auto Sales & Service Limited and Devinder Sanghera breached sections 40, 42(10), and 42(19) of O. Reg. 333/08 as well as the Code of Ethics subsections 7 and 9.



Joint Submissions on Penalty:

1. The Dealer and Sanghera agree to pay a fine in the amount of \$10,000. The dealer shall pay \$2,000 within 30 days of the date of the Order. The remaining balance will be paid in two installments of \$4,000. The first installment being due on or before November 15, 2014. The second installment being due on or before June 15, 2015.
2. Sanghera agrees to complete the OMVIC certification course within 90 days of the date of the Order. The dealer will incur 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 of acceptance of this offer. 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 or who are otherwise required to do pursuant to the Act.
4. The Dealer and Sanghera agree to comply with the Act and Standards of Business Practice, as may be amended from time to time.

Penalty Decision:

The Panel makes the following order on penalty:

1. The Dealer and Sanghera shall to pay a fine in the amount of \$10,000. The dealer shall pay \$2,000 within 30 days of the date of the Order. The remaining balance will be paid in two installments of \$4,000. The first installment is due on or before November 15, 2014. The second installment is due on or before June 15, 2015.
2. Sanghera shall complete the OMVIC certification course within 90 days of the date of the Order. The dealer will incur all costs associated with this.
3. The Dealer shall 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 acceptance of this offer. 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 or who are otherwise required to do pursuant to the Act.
4. The Dealer and Sanghera shall comply with the Act and Standards of Business Practice, as may be amended from time to time.



Reasons for Penalty:

The panel having accepted the Agreed Statement of Facts is satisfied the penalty is appropriate to the circumstances. The panel is convinced the financial penalty is sufficient to deter White Star Auto Sales & Service Limited and Devinder Sanghera from similar acts, while sending a clear and significant message to other registrants that breaches of their obligations under the legislation will not be tolerated. The panel considered the number of violations but also considered the volume of business the dealer does. While the fines are in the panels' opinion at the lower end of the range for similar breaches the panel is mindful of the size of the dealership. The panel is satisfied that the amount of the fine is as significant to White Star Auto Sales & Service Limited and Devinder Sanghera as a maximum allowable fine under the legislation would be to a larger dealership. The panel accepts that the fine is significant enough to warrant agreeing to installment payments over a period of over a year from the date of the order as set out in the Joint Submission on Penalty and as ordered above. Proceedings with penalties such as these serve to maintain industry standards. Having weighed all the relevant facts and submissions the panel is satisfied the penalty set out in the Joint Submission on Penalty is reasonable to the whole of the circumstances, within the normal range for similar offences and therefore is so ordered.

Ontario Motor Vehicle Industry Council
Discipline Panel

A handwritten signature in cursive script, reading "Debra Mattina", positioned above a horizontal line.

Debra Mattina, Chair
Bruce Wilson, Vice Chair
Murray Clark, Vice Chair