

DISCIPLINE DECISION

REVIEWING PANEL: Deb Mattina, Public Member
Joe Wade, Registrant
Jon Lemaire, 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-

4475518 CANADA INC o/a HAWKESBURY HONDA

-and-

Alexandre Gagne

-and-

Benoit Charron

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: July 5, 2023

Findings: Sections 9(1) of the Code of Ethics, Ontario Regulation 332/08

Alexandre Gagne and Benoit Charron have contravened the following:

6(2) of the Code of Ethics, Regulation 332/08

Order:

1. The Dealer is ordered to pay a fine in the amount of \$4,500 no later than September 30, 2023.
2. Gagne is ordered to successfully complete the MVDA Key Elements course, no later than September 30, 2023.
3. Charron is ordered to successfully complete the MVDA Key Elements course, no later than September 30, 2023.
4. The Dealer is ordered to offer all current and future sales staff the opportunity to complete the Automotive Certification Course (the "Course"). Current sales staff will be offered the Course no later than September 30, 2023. 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.
5. Gagne, Charron, and the Dealer agree to comply with the Act 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. 4475518 Canada Inc o/a Hawkesbury Honda (the "Dealer") was first registered as a motor vehicle dealer in or around June 2010.
2. Alexandre Gagne ("Gagne") was first registered as a motor vehicle salesperson in or around June 2010. At all material times, Gagne has been an Officer as well as the person in charge of the day-to-day activities of the Dealer.
3. Benoit Charron ("Charron") was first registered as a motor vehicle salesperson in or around August 2010. At all material times, Charron has been the Sales Manager at the Dealer.
4. On or about June 25, 2020, Gagne successfully completed the Automotive Certification course (the "Course").
5. On or about July 6, 2010, Charron successfully completed the Course.

6. Included in the Course syllabus is the obligation for dealers to ensure all individuals trading in motor vehicles on their behalf are registered under the Act.

OMVIC publications: unregistered salespeople:

7. Since the Act was proclaimed, OMVIC has issued the following publications reminding dealers of the requirement for all salespeople trading in vehicles on behalf of a dealer to be registered under the Act:
 - a. Dealer Standard: Spring 2010
 - b. Dealer bulletin: September 2013
 - c. Dealer Standard: Fall 2013
 - d. Dealer bulletin: May 2014
 - e. Dealer Standard: 2014: Issue 3
 - f. Dealer Standard: 2014: Issue 4
 - g. Dealer bulletin: March 2019

These publications continue to be available on OMVIC's website.

Prior correspondence with Dealer:

8. During an inspection on or about October 20, 2010, the Dealer was reminded to ensure that all individuals trading in motor vehicles on its behalf are registered under the Act.
9. During an inspection on or about July 17, 2014, Charron was reminded of the Dealer's requirement to ensure that all individuals trading in motor vehicles on its behalf are registered under the Act.
10. During an inspection on or about June 15, 2018, Charron was reminded of the Dealer's requirement to ensure that all individuals trading in motor vehicles on its behalf are registered under the Act.

Retaining the services of unregistered salespeople:

11. Between on or about February 10, 2022 and or about March 17, 2022, "Salesperson A" traded the following vehicles on behalf of the Dealer, without being registered to do so under the Act:
 - a. February 10, 2022: 2022 Honda Civic (VIN 2HGFE2F5XNH104560)
 - b. February 10, 2022: 2022 Honda Accord (VIN 1HGCV1F90NA800360)
 - c. February 18, 2022: 2022 Honda CR-V (VIN 2HKRW2H87NH201755)
 - d. February 25, 2022: 2022 Honda HR-V (VIN 3CZRU6H26NM103930)
 - e. March 17, 2022: 2022 Honda Civic (VIN 2HGFE2F54NH116736)

This is contrary to section 4(3) of the Act, as well as section 9 of the Code of Ethics.

12. Salesperson A has since become registered under the Act.
13. Between on or about March 18, 2022, and on or about May 11, 2022 "Salesperson B" traded the following vehicles on behalf of the Dealer, without being registered to do so under the Act:

- f. March 18, 2022: 2022 Honda CR-V (VIN 2HKRW2H91NH220472)
- g. March 23, 2022: 2022 Honda HR-V (VIN 3CZRU6H21NM105066)
- h. March 23, 2022: 2022 Honda Pilot (VIN 5FNYP6H01NB500184)
- i. March 31, 2022: 2022 Honda Civic (VIN 2HGFE2F31NH117650)
- j. April 7, 2022: 2022 Honda CR-V (VIN 2HKRW2H99NH221448)
- k. April 13, 2022: 2022 Honda CR-V (VIN 2HKRW2H24NH212353)
- l. April 14, 2022: 2022 Honda Civic (VIN 2HGFE1F90NH005744)
- m. April 23, 2022: 2022 Honda CR-V (VIN 2HKRW2H44NH220955)
- n. May 5, 2022: 2022 Honda Civic (VIN 2HGFE2F26NH120938)
- o. May 11, 2022: 2022 Honda Civic (VIN 2HGFE2F61NH119870)

This is contrary to section 4(3) of the Act, as well as section 9 of the Code of Ethics.

14. The Dealership terminated Salesperson B's employment shortly after it was determined he had been trading in motor vehicles without registration under the Act.

Charron's contravention of the Code of Ethics:

15. Charron was responsible for hiring and supervising both Salesperson A and Salesperson B and knew or ought to have known that these individuals were trading vehicles while not registered under the Act. As such, Charron personally contravened sections 6 and 9 of the Code of Ethics.

Gagne's contravention of the Code of Ethics:

16. As both an Officer and the person in charge of the day-to-day activities of the Dealer, Gagne failed to ensure the Dealer conducts its business with the Act and Code of Ethics, and thus personally contravened sections 6 and 9 of the Code of Ethics.

By failing to comply with the following section of the Act:

Unregistered salesperson

4(3) A motor vehicle dealer shall not retain the services of a salesperson unless the salesperson is registered in that capacity.

It is thereby agreed that Gagne and Charron have breached the following section of the Code of Ethics, ON Regulation 332/08

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.

It is thereby agreed that Gagne, Charron, and the Dealer have contravened the following section of the Code of Ethics, as set out in Regulation 332/08.

Professionalism

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.

Joint Submission on Penalty

1. The Dealer is ordered to pay a fine in the amount of \$4,500 no later than **July 31, 2023**.
2. Gagne is ordered to successfully complete the MVDA Key Elements course, no later than **July 31, 2023**
3. Charron is ordered to successfully complete the MVDA Key Elements course, no later than July 31, 2023.
4. The Dealer is ordered to offer all current and future sales staff the opportunity to complete the Automotive Certification Course (the "Course"). Current sales staff will be offered the Course no later than **July 31, 2023**. 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.
5. Gagne, Charron, and the Dealer agree to comply with the Act and Standards of Business Practice, as may be amended from time to time.

Decision of the Reviewing Panel

Having reviewed and considered the Agreed Statement of Facts, 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 subsection 9(1) of the OMVIC Code of Ethics, as set out in Ontario Regulation 332/08, made under the *Motor Vehicle Dealers Act, 2002*.

The reviewing panel also agrees with the Parties' Joint Submission on Penalty and determines that the settlement is in the public interest. Accordingly, the Reviewing panel makes the following Order:

1. The Dealer is ordered to pay a fine in the amount of \$4,500 no later than **July 31, 2023**.
2. Gagne is ordered to successfully complete the MVDA Key Elements course, no later than **July 31, 2023**
3. Charron is ordered to successfully complete the MVDA Key Elements course, no later than **July 31, 2023**.
4. The Dealer is ordered to offer all current and future sales staff the opportunity to complete the Automotive Certification Course (the "Course"). Current sales staff will be

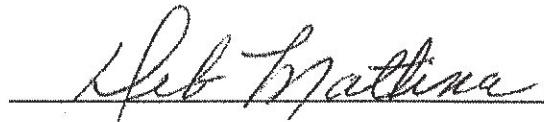
offered the Course no later than July 31, 2023. Future sales staff will be offered the course within 90 days of being retained in this capacity. The Dealer will incur all costs associated with this. It is understood between the parties this clause does not apply to sales staff who have completed the Course after January 1, 2009, or who are otherwise required to do so pursuant to the Act.

5. Gagne, Charron, and the Dealer agree to comply with the Act and Standards of Business Practice, as may be amended from time to time.

NB. The dates in the order have been adjusted upon request from the original July 31, 2023 date to September 30, 2023 to provide sufficient time to allow for compliance.

Ontario Motor Vehicle Industry Council
Discipline Committee

Dated: July 24th, 2023

A handwritten signature in cursive script, reading "Deb Mattina", is written over a horizontal line.

Deb Mattina, *Chair*

On behalf of
Joe Wade, *Chair/Member*
Jon Lemaire, *Member*