



DISCIPLINE DECISION AND REASONS

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*

- AND -

LUXE INC. o/a CURVE MOTORS

- AND -

AMIR HOSSEINI

- AND -

HAMID HOSSEINI

(collectively, the "Registrants")

Date of Hearing: October 17, 2013

Date of Decision: November 4, 2013

Panel: Debra Mattina (Chair)
Stuart Sherman
John Morabito

The Plea:

The Registrants admitted the facts as stated found at paragraphs 1 through 9 of the Notice of Complaint (Ex. 1). The Registrants pleaded not guilty to the allegations found at paragraphs 10 through 13.

Findings:

Breach of Section 36(5) of Regulation 333/08 and Sections 4 and 9 of the Code of Ethics

Order:

1. The Dealer (Luxe Inc. o/a Curve Motors) is ordered to pay a fine in the amount of \$20,500.00. The Registrants Amir Hosseini and Hamid Hosseini are ordered to pay fines



in the amount of \$3,000.00 each. The total fine payable by the Registrants is \$26,500.00. The Registrants are ordered to pay an instalment of \$13,250.00 within 90 days of the date of this Order. The Registrants are ordered to pay the remaining \$13,250.00 within 180 days of the date of this order. The fines are payable to the Ontario Motor Vehicle Industry Council

2. Amir Hosseini and Hamid Hosseini are ordered to successfully retake the OMVIC certification course, within 90 days of the date of the Discipline Committee Order. The Dealer will incur all costs associated with this.
3. The Dealer is ordered to offer all present and future registered salespeople the opportunity to complete the OMVIC certification course. Current registered salespeople are to be offered the course within 90 days of the date of the Discipline Committee Order. The dealer will incur all costs associated with this.
4. The Dealer shall ensure all future advertising is in compliance with *Motor Vehicle Dealers Act, 2002*, the Code of Ethics, and Standards of Business Practice, as may be amended from time to time.
5. The Dealer shall comply with the *Motor Vehicle Dealers Act, 2002* and Standards of Business Practice, as may be amended from time to time.

Facts:

1. This hearing, held before a Panel comprised of D. Mattina, S. Sherman, and J. Morabito on October 17, 2013, related to a Notice of Complaint, dated February 15, 2013, issued by the Applicant, the Ontario Motor Vehicle Industry Council (OMVIC) which alleged that the Respondents, Luxe Inc. o/a Curve Motors (the "Dealer") and Amir Hosseini ("Amir") and Hamid Hosseini ("Hamid") breached subsection 36(5) of Regulation 333/08 and Sections 4 and 9 of the Code of Ethics, as set out in Regulation 332/08. The hearing was conducted pursuant to Section 17 of the *Motor Vehicle Dealers Act, 2002 (MVDA, 2002)*. Michelle Samaroo represented OMVIC. Delaram Saadi appeared on behalf of the Dealer and the Registrants. Amir and Hamid Hosseini, who was present throughout the hearing. Independent Legal Counsel, (ILC) Luisa Ritacca, was also present.

2. Section 36(5) of Regulation 333/08 provides that:

A registered motor vehicle dealer to whom this section applies shall ensure that any advertisement placed by the dealer complies with this section.

36(5) If any of the following is true of a motor vehicle, **an advertisement** that attempts to induce a trade in the specific vehicle shall indicate, in a clear, comprehensible and prominent manner, that the vehicle was previously,



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- (a) **leased on a daily basis**, unless the vehicle was subsequently owned by a person who was not a registered motor vehicle dealer;
- (b) used as a police cruiser or used to provide emergency services; or
- (c) used as a taxi or limousine. O. Reg. 333/08, s. 36 (5). **(emphasis added)**
3. The Panel received the following documents which were accepted and marked as Exhibits:
- Exhibit 1: Notice of Complaint, dated February 15, 2013
 - Exhibit 2: OMVIC's Book of Documents, containing Tabs 1 to 30
 - Exhibit 3: The Respondent's Book of Documents
 - Exhibit 4: OMVIC's Additional Disclosure Documents
4. The Dealer and Amir and Hamid Hosseini (the "Registrants") breached the following sections of the Code of Ethics, as set out in Regulation 332/08:
- (4.1) 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.
- (4.2) A registrant shall ensure that all representations, **including advertising**, made by or on behalf of the registrant in connection with trading in motor vehicles, are legal, decent ethical and truthful. **(emphasis added)**
- (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.
- (9.2) In carrying on a business, a registrant shall act with honesty, integrity and fairness.
- (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. **(emphasis added)**
5. Luxe Inc. o/a Curve Motors (the "Dealer") was first registered as a motor vehicle dealer in or around January 2012. Amir Hosseini ("Amir") was first registered as a motor vehicle salesperson in or around August 2005. At all material times, Amir was an officer and director of Curve LTD. o/a Curve Motor Sport. Hamid Hosseini ("Hamid") was first registered as a motor vehicle salesperson in or around January 2011. At all material times Amir and Hamid have been officers and directors of the Dealer.
6. The allegations against the Dealer and Amir and Hamid Hosseini are in regard to failure to disclose that cars posted in the dealers advertisements were former daily rentals. The



- allegations also relate to failure by the Registrants to comply with the language requirements when advertising "as is/unfit" vehicles.
7. In or around December 2008, OMVIC issued a bulletin advising dealers of future advertising changes under the *Motor Vehicle Dealers Act, 2002*. Included in the bulletin was the requirement to disclose former daily rentals in advertisements.
 8. In or around April 2010, OMVIC issued a bulletin reminding dealers of requirements when advertising "as is/unfit" vehicles.
 9. By email dated January 28, 2011, a representative of the registrar reminded Amir of the requirement to ensure compliance when advertising "as is/unfit" vehicles.
 10. In or around June 2011, OMVIC issued a bulletin reminding dealers of the requirements when advertising "as is/unfit" vehicles.
 11. In or around January 20, 2012 the Dealer executed terms and conditions of registration. As per condition 6, the Dealer agreed to comply with the Act and the Code of Ethics.
 12. In or around February 2012, OMVIC issued a bulletin reminding dealers of requirements when advertising "as is/unfit" vehicles. The bulletin also reminded dealers of the "all inclusive" pricing regulations.
 13. During an inspection on or about March 9, 2012, a representative of the Registrar reviewed the January 20, 2012 terms and conditions with the Dealer.
 14. By email dated August 27, 2012, a representative of the registrar reminded the Dealer of the requirement to ensure compliance when advertising "as is/unfit" vehicles.
 15. Both Amir Hosseini and Hamid Hosseini have successfully completed the OMVIC certification course through Georgian College previously. Amir completed the course in September 2004 and Hamid completed the course in August 2011. This is confirmed by email correspondence from Georgian College to OMVIC. (Ex. 4)
 16. On or before December 19, 2012 the Dealer advertised a 2012 Volkswagen Golf (VIN WVVDA7AJ6CW076712) without disclosing the vehicle's prior daily rental use, contrary to section 36(5) of Regulation 333/08 as well as section 4 and 9 of the Code of Ethics. Moreover, this advertisement did not properly disclose that the vehicle was being sold as "unfit", contrary to section 4 of the code of ethics.
 17. On or before December 19, 2012 the Dealer advertised a 2012 Volkswagen Golf (VIN WVVDA7AJ4CW091449) without disclosing the vehicle's prior daily rental use, contrary to section 36(5) of Regulation 333/08 as well as section 4 and 9 of the Code of Ethics. Moreover, this advertisement did not properly disclose that the vehicle was being sold as "unfit", contrary to section 4 of the Code of Ethics.
 18. On or before December 19, 2012 the Dealer advertised a 2012 Volkswagen Jetta (VIN 3VWDX7AJ0CM335643) without disclosing the vehicle's prior daily rental use, contrary to section 36(5) of Regulation 333/08 as well as section 4 and 9 of the Code of Ethics. Moreover, this advertisement did not properly disclose that the vehicle was being sold as "unfit", contrary to section 4 of the Code of Ethics.



19. On or before December 19, 2012 the Dealer advertised 15 vehicles. These advertisements did not properly disclose that the vehicles were being sold as "unfit". As such, the prices connected to the motor vehicles were not clear, contrary to section 4 of the Code of Ethics.

Reasons:

20. At the hearing OMVIC introduced into evidence its book of documents (Ex. 2) and called three witnesses to speak to the contents of the documents, Anisah Patel, Andrea Korth, and Laura Halbert. The documents located at Tabs 6 through 12 (Exhibit 2) consist of 4 bulletins regarding advertising requirements mandated by the Regulations, 2 emails sent to the Registrants addressing issues of non-compliance with regard to Registrants' advertisements, a copy of an inspection report dated March 7, 2012 where the Registrants' obligations regarding advertisements were discussed, and a signed copy of Terms and Conditions attached to the Registrants' registration as a motor vehicle dealer. The inspection report written by Anisah Patel indicated that "dlr (dealer) has a good understanding of requirements". These documents were unchallenged in cross examination. Both Amir Hosseini and Hamid Hosseini had successfully completed the OMVIC certification (Ex. 4). If they were unsure of the obligations, the information would be contained in their course material, available on OMVIC's website, available in periodic bulletins issued by OMVIC or upon telephone or email inquiry to OMVIC. The Panel accepts that the Registrants knew or ought to have known their obligations under the *MVDA 2002* and associated Regulations with respect to advertising.
21. With respect to allegations of vehicles advertised without the Registrant disclosing that the vehicles were "former daily rentals", three advertisements were introduced at Tabs 13 through 15 (Ex. 2). These advertisements contain no mention of the previous daily rental history. Also located at these Tabs is the Ministry of Transportation "Vehicle Record" or ownership history for each of the three corresponding vehicles. All of the vehicles came into the Registrants' possession directly from WTH Car Rental.
22. Following the purchase of the vehicles by the Registrants, the vehicles were advertised for sale to the public without the disclosure required by Section 36(5) which clearly states "If any of the following is true of a motor vehicle, an advertisement that attempts to induce a trade in the specific vehicle shall indicate, in a clear, comprehensible and prominent manner, that the vehicle was previously, (a) leased on a daily basis, unless the vehicle was subsequently owned by a person who was not a registered motor vehicle dealer.
23. The documents were not challenged in cross examination.
24. The Registrants did not dispute that they failed to disclose the required information in the advertisement. It is the Registrants' position that the information was completely disclosed on the bill of sale so no harm was done to the public and in the Registrants' opinion the Regulations were adhered to in spirit. The Panel does not accept this position.



25. While the Registrants recognize their obligation to disclose the information on the bill of sale they repeatedly failed to disclose the information in their advertising despite continuing reminders and bulletins from OMVIC to do so..
26. A daily rental history on a vehicle can be a significant material fact for a purchaser, obviously more important to some purchasers than to others, but nonetheless a fact which is required to be disclosed in the advertising. A potential buyer given the required information could then decide whether or not they are interested in looking at a vehicle that has a previous daily rental history, prior to being influenced by the look of the vehicle or the pressure of a sales person.
27. Clearly the legislation is intended to protect the public by regulating specific content in advertising. Registrants are required to provide the public with any material fact which might influence their ability to make an informed decision to purchase a vehicle which includes whether or not the prospective buyer deems it worthwhile to even attend the dealer's place of business to view the vehicle. Failure by the Registrants to disclose that the vehicles advertised were previous daily rentals denied the public the right to make a choice unfettered by a salesperson.
28. Additionally, the Registrants' conduct created an unfair advantage over other registrants who comply with the disclosure obligations, whose potential customers choose not to attend their place of business because the registrants were honest and forthright in their advertising. Given similar or identical vehicles in similar condition where one is a daily rental and one is not, the Panel is satisfied that most purchasers would opt to buy the vehicle which is not a daily rental. Clearly the legislation contemplates that to most purchasers a previous daily rental history is a material fact in the decision to buy, otherwise the legislation would be silent on the issue.
29. Although Hamid Hosseini denied the suggestion that the Registrants acted in order to gain a competitive advantage, this Panel is satisfied that that the Registrants knew their obligations under the legislation, but chose not to comply for just those reasons.
30. Regarding the allegations with respect to breach of the Code of Ethics pursuant to Section 4 requiring advertising prices connected to a motor vehicle to be clear, comprehensible and prominent, fifteen cars were advertised by the Registrants between December 17, 2012 and December 18, 2012 where the sale price did not include a safety certificate or an e-test. Elsewhere in the advertisements safety certificates and e-tests were offered for each of the vehicles at an additional cost .
31. When a dealer is advertising a vehicle without safety or e-test the advertisement **must** state in a clear and prominent fashion the following statement: *"Vehicle is not drivable, not certified and not e-tested. Certification and e-testing available for \$xxx."*
32. Alternatively, if a dealer chooses to offer a vehicle "as-is" the advertisement **must** state in a clear and prominent fashion the following statement: *"This vehicle is being sold "as-is", unfit, not e-tested and is not represented as being in a road worthy condition , mechanically sound or maintained at any guaranteed level of quality. The vehicle may not be fit for use as a means of transportation and may require substantial repairs at the*



purchaser's expense. It may not be possible to register the vehicle to be driven in its current condition."

33. While the Registrants did advertise the cost of the e-test and safety certificate for each of the vehicles, the Registrants did not include the mandatory statement for either unfit or "as-is" vehicles. The Registrants maintain that the vehicles are not unfit and that they were in fact sold as fit after the purchaser paid for the safety and e-test.
34. During the period between December 2008 and August 27, 2012 the registrants received the numerous educational bulletins, e-mail, inspections and Terms and Conditions documents located at Tabs 6 through 12. Each of these documents spoke to the Registrants' legal obligations with respect to advertisements of the vehicles the registrants offered for sale. The registrants argue that they should not have to advertise a vehicle which would have no problem passing a safety or e-test as being unfit when in their opinion the vehicles are fit, they just haven't undergone certification or e-testing.
35. If one follows this logic, then charging for the safety and e-test above the advertised price is a violation of "all in" pricing requirements, which still leave the Registrants in violation of the Code of Ethics. The vehicles may be advertised as either fit, with safety certificate and e-test included in the all in pricing or they must be advertised as unfit, and do not have a safety certificate and e-test included which then requires the advertisement to have the mandatory language around unfit/as-is vehicles.
36. In a letter dated February 25, 2013, (Tab 2, Ex 2), Hamid Hosseini stated in a response letter to OMVIC as follows: "When the industry came up with the idea of one price advertising I was extremely happy. But after few months' I saw my competitors come up with safety and E-test charges. And they didn't get stop, they just pushed to use the different words to collect that money and I had to compete with them." Undoubtedly, the Registrants knew their obligations under the law but chose to be purposefully obtuse to all the attempts by OMVIC to assist them in complying with their advertising obligations.
37. Hamid Hosseini stated repeatedly during the hearing that the Registrants meet the requirements of the MTO (Ministry of Transportation of Ontario) in the operation of the Dealership, but at no time did he acknowledge the Registrants' obligations under the *Motor Vehicle Dealers Act, 2002* with respect to advertising. Mr. Hosseini concentrated his arguments on the assertion that all required information was properly disclosed on the bill of sale. Hamid Hosseini steadfastly avoided any acknowledgement of the Registrants' obligation to comply with the regulations regarding advertising. Loosely translated he felt the end justified the means. In his opinion the information did ultimately get disclosed to the customer via the bill of sale, and Mr. Hosseini refused to comprehend the distinction between informing the consumer in advance with a properly worded advertisement and informing the consumer at the signing of the deal. The Panel reminded the Registrants that the Panel was composed to preside over a hearing pertaining to allegations which specifically deal with non-compliance to the regulations as they relate to advertising.
38. The *MVDA, 2002* requires registrants to comply with specific rules and regulations. These rules and regulations are set in place to protect the public from unscrupulous dealers and salespeople and to attempt to "level the playing field" for all registrants.



Each registrant is required under the legislation to perform mandatory actions in specific circumstances and to adhere to the Code of Ethics as set out in Regulation 332/08. Compliance is not optional. One cannot pick and choose which regulations they will comply with. It is clear that the Registrants are attempting to do exactly that.

The Panel accepts the Registrants knew or ought to have known that their non-compliance with the regulations regarding advertising constituted a breach of the Code of Ethics.

39. The Code of Ethics states at Section 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 the registrant.

(2) In carrying on a business, a registrant shall act with honesty, integrity and fairness.

(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 clear to this Panel that in wilfully breaching Section 36(5) of the Regulation 333/08 and Section 4 of the Code of Ethics the Registrants have also breached Section 9 of the Code of Ethics in that their actions have been neither honourable or professional. They have not acted with honesty, integrity and fairness, nor have they expended their best efforts to prevent misrepresentation.

40. With respect to the penalty imposed in this Order, the Panel heard submissions from both OMVIC's counsel, Michelle Samaroo and Hamid Hosseini. Although Mr. Hosseini had counsel present he requested to make submissions to the Panel himself. Mr. Hosseini was advised that the Panel preferred that he speak through his counsel but nevertheless granted him permission to speak to the issue of penalty.

41. Ms. Samaroo submitted 4 prior OMVIC Discipline decisions as follows:

REGISTRAR, MOTOR VEHICLE DEALERS ACT, 2002
AND
DIMITRY RIABCHUK & JURJ CHVAETSKI o/a KD CARS
AND
DIMITRY RIABCHUK

REGISTRAR, MOTOR VEHICLE DEALERS ACT, 2002
AND
2095483 ONTARIO INC o/a CARCO
AND
JIM WILLIAMS

REGISTRAR, MOTOR VEHICLE DEALERS ACT, 2002



AND
AIRPORT FORD LINCOLN SALES LIMITED
AND
ANTHONY KAJAH

ONTARIO MOTOR VEHICLE COUNCIL
AND
MATKATH CORPORATION o/a MATKATH AUTO SALES
AND
CHRISTOPHER HADER

42. All four of these decisions relate to violations of Section 36 of Regulation 333/08 with the Airport Ford Lincoln Sales Limited decision specifically regarding Section 36(5) as does the case before this Panel. Each of the cases addressed violations regarding advertising requirements. Additionally all four have findings of breach of the Code of Ethics with respect to Sections 4 and 9. Each of the registrants in these cases was fined, each was ordered to complete the OMVIC certification course, and each was ordered to offer the course to their sales staff at the registrants' expense. Ms. Samaroo submitted that the maximum fine allowed is \$25,000.00 per registrant. On behalf of OMVIC she requested fines as follows:

Against Luxe Inc. o/a Curve Motors - \$7,000.00 with respect to the three counts of failing to disclose previous daily rentals in their advertisements. An additional \$18,000.00 representing \$1,000.00 for each of the 18 advertisements posted by the registrants which represent a breach of the Code of Ethics at sections 4 and 9.

Against Amir Hosseini - \$3,000.00 globally for his failure as an officer and director to ensure that the dealerships advertisements complied with the MVDA.

Against Hamid Hosseini - \$3,000.00 globally for his failure as an officer and director to ensure that the dealerships advertisements complied with the MVDA.

43. Mr. Hosseini submitted two documents each of which were previous OMVIC information bulletins. One of the documents gave a brief synopsis of six recent Discipline Decisions. Each summary is one or two sentences long and each sets out the amount of the fines ordered against the registrants but none include the number of infractions involved in the Notices of Complaint.

44. The second document submitted included a two sentence outline of a discipline decision wherein the Registrant was fined for employing unlicensed salespersons.

45. Mr. Hosseini submitted that the amount of the fines requested by OMVIC was unfair when compared to the fines contained in his submissions. The Registrants submitted that the decisions submitted on OMVIC's behalf were not on point.

46. The Panel considered both submissions and contrary to the Registrants' position the Panel finds that the prior OMVIC discipline decisions were very much on point and



although this Panel is not bound by the decisions of any prior Panel, the Panel would be remiss if it did not attempt to utilize them to determine a range of penalties consistent with similar violations. In that regard the Panel did observe that the penalties being requested were consistent with those ordered when one took into consideration the number of violations represented in each case. The Panel was not persuaded by the submissions of Registrants. The submissions provided little detail and in at least 4 of the 7 cases referenced in the summaries the cases were completely off point.

47. The Panel did however hear Mr. Hosseini. The Panel considered the large number of violations (3 for non disclosure of former daily rental information and 15 for failure to include mandatory language regarding unfit/as-is vehicles) which works to elevate the amount of the fines, however the Panel also noted that each of the advertisements were posted over a two day period. However, had the Registrants not posted so many advertisements at once they would likely be facing much lower fines and would have learned a much less costly lesson.
48. While the Panel is convinced the Registrants knew exactly what they were obligated to do under the law, the Panel is not convinced that the registrants fully understood how vigorously such breaches are pursued when a registrant shows no inclination to comply as is the case with these Registrants. The evidence supports that the Registrants demonstrated a history of ignoring the issues until a full 10 days elapsed after OMVIC issued a Notice of Complaint that led to this hearing.
49. In the interest of fairness but also recognizing the seriousness of non-compliance the Panel finds it appropriate to reduce the portion of the fine related to the 18 advertisements to \$750.00 each from the requested \$1,000.00 each resulting in a fine related to these counts in the amount of \$13,500. In addition \$7,000.00 is in this Panel's opinion appropriate in relation to the 3 counts of non-disclosure of "former daily rentals" history making the total fine ordered against Luxe Inc. o/a Curve Motors \$20,500.00. Amir Hosseini and Hamid Hosseini as officers and directors of the Dealership cannot expect to be permitted to act with impunity and are therefore Ordered to pay \$3,000.00 each globally for all counts. The total fine ordered to all the Registrants is \$26,500.00. The Panel is satisfied that this amount is consistent with prior decisions and within the normal range for similar infractions.
50. The Panel in reaching the decision to Order this amount also turned their minds to the impact this might have on the Registrants' business. While the Registrants did not make any submissions with regard to their financial status, being sensitive to the impact on the Registrants' ability to do business, the Panel has determined that it is appropriate to extend the timeline for complete payment of fines from the usual 90 days out to 180 days. The Registrants will be required to pay an instalment of \$13,250.00 within 90 days of the date of the Discipline Committee Order. The second instalment of the remaining \$13,250.00 is due within 180 days of the date of this Order. The entire fine is payable to the Ontario Motor Vehicle Industry Council.
51. The Panel is satisfied that the provisions of this Order serve to protect the public in that the Registrants are required to retake and successfully complete the OMVIC certification course. It also provides for present and future registered salespeople employed by Luxe Inc. o/a Curve Motors the opportunity to complete the OMVIC certification course. The



penalty also contains a component directed at specific deterrence in that the fine imposed is significant enough to give the Registrants incentive to abstain from behaviour which might land them back before another discipline Panel. Finally, the provisions of this Order send a clear message to the entire industry that the obligation to comply with the regulations is a serious matter and failure to act in accordance of the regulations will not be tolerated.

Ontario Motor Vehicle Industry Council
Discipline Committee

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

*Debra Mattina, Chair
Stuart Sherman, Vice-Chair
John Morabito, Vice-Chair*