

DISCIPLINE DECISION

REVIEWING PANEL: Caroline Brett, Public Member
Joe Wade, Discipline Tribunal Chair, Registrant
Stuart Sherman, Registrant

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 :

ONTARIO MOTOR VEHICLE)
INDUSTRY COUCIL)
- and -)
GUELPH K AUTO LP o/a GUELPH KIA)
- and -)
STEPHEN GEORGE LEECH)
)
)
)

This matter proceeded by way of Rule 1.07 of the Rules of Practice before the Discipline Tribunal and the Appeals Tribunal. This Reviewing Panel has reviewed and considered written materials from the Parties together with a waiver of the requirement for an oral hearing and hereby makes the following Order:

Date of Decision: July 10, 2024

Findings:

GLPH K Auto LP o/a Guelph Kia has breached the following:

- Section 4(2) and 9(3) of the Code of Ethics, O. Reg. 332/08

Stephen George Leech has breached the following:

- Section 6(2) of the Code of Ethics, O. Reg. 332/08

Order:

1. The Dealer shall pay a fine in the amount of **\$4,000** no later than ninety (90) calendar days from August 29, 2024.
2. Stephen George Leech shall successfully complete the MVDA Key Elements course no later than ninety (90) calendar days from August 29, 2024.
3. The Dealer shall offer all current and future sales staff the opportunity to complete the Automotive Certification Course (the "Course"). The Dealer will provide confirmation that current staff have been offered the Course no later than ninety (90) calendar days from August 29, 2024. Future sales staff will be offered the course within 90 calendar days of being retained in this capacity and this shall remain in effect for a period of one year from August 29, 2024. The Dealer will incur all costs associated with this.
4. The Dealer and Stephen George Leech agree to comply with the *Motor Vehicle Dealers Act, 2002*, its regulations, and the Code of Ethics.

Overview

This matter proceeded on the basis of an Agreed Statement of Facts, dated April 16, 2024, a Joint Submission on Penalty and a waiver of oral hearing, pursuant to Rule 1.07 of the Rules of Practice before the Discipline Tribunal and the Appeals Tribunal. The Agreed Statement of Facts states in relevant part as follows:

Background

1. GLPH K Auto LP o/a Guelph Kia (the "Dealer") was first registered as a motor vehicle dealer in and around November 2021.
2. Stephen George Leech ("Leech") was first registered as a salesperson in and around October 2009. At all material times, Leech has been a General Manager and the Person in Charge of the day-to-day activities of the Dealer.

OMVIC Registrant Education re: All-in Pricing:

3. Since the Act was proclaimed in 2010, OMVIC has issued various educational materials, including publications, webinars, and guidelines, reminding dealers of their all-in pricing obligations. The dates of said publications are attached hereto as Schedule "A". Educational materials continue to be available on OMVIC's website.

Prior OMVIC Inspection:

4. On or about March 10, 2022, a representative of the Registrar met with Leech and conducted an inspection of the Dealer's books and records. The Registrar's representative observed an additional fee for "Invisitrack/tire warranty" added to the transactions. The Registrar's representative reminded Leech about the Dealer's all-in pricing obligations pursuant to section 36 of O. Reg. 333/08.

Dealer's Contravention of the Code of Ethics:

5. On or before February 16, 2023, the Dealer published an advertisement for a white 2020 Kia Sportage EX AWD, stock# P1580 (VIN# KNDPNCAC4L7809779) with an advertised price of \$29,995 plus taxes and licensing.
6. However, the advertisement failed to indicate that the vehicle was a previous daily rental. As such, the Dealer contravened section 36(5) of O. Reg. 333/08, as well as sections 4(2) and 9(3) of the Code of Ethics.
7. On or about February 16, 2023, an OMVIC Representative made inquiries about the vehicle, while posing as a member of the public.
8. A salesperson, acting on behalf of the Dealer, met with the OMVIC Representative. The OMVIC Representative asked the salesperson about the history of the vehicle and whether there were any issues or concerns. The salesperson presented the OMVIC Representative with the vehicle's Carfax, showing no accident history. However, the salesperson did not mention that the vehicle was a previous daily rental.
9. The salesperson then provided the OMVIC Representative with a worksheet for the vehicle. The worksheet included an additional "InvisiTrak / Safe Ride / Doc Fee" of \$558. The OMVIC Representative made further inquiries about this fee and the salesperson explained that the fee was for an anti-theft package with \$5,000 coverage, a tire warranty and admin fee.
10. The OMVIC Representative then asked if this fee was optional. The salesperson advised that the fee was not optional.
11. The salesperson then stated that the selling price of the vehicle could be reduced by the amount of the fee.
12. As such, the Dealer's advertised vehicle price was not all-inclusive. This is contrary to section 36(7) of O. Reg. 333/08, as well as sections 4(2) and 9(3) of the Code of Ethics.

Leech's Non-compliance:

13. Leech failed to ensure that the Dealer conducted its business in compliance with the *Motor Vehicle Dealers Act, 2002* (the "Act"), its regulations, and the Code of Ethics and thus personally contravened section 6(2) of the Code of Ethics.

It is thereby agreed that the Dealer has contravened the following sections of the Code of Ethics, as set out in O. Reg. 332/08:

Disclosure and Marketing

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.

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 Leech has contravened the following section of the Code of Ethics, as set out in O. Reg. 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.

Decision of the Reviewing Panel

Having reviewed and considered the Agreed Statement of Facts, as well as the additional written submissions provided by the Parties, the Reviewing Panel is satisfied that the evidence contained in the Agreed Statement of Facts proves on a balance of probabilities that the Dealer has breached subsections 4(2) and 9(3) of the OMVIC Code of Ethics, and that Leech has breached subsection 6(2) of the OMVIC Code of Ethics.

The Reviewing Panel also accepted the Joint Submission on Penalty for the reasons that follow.

Reasons for Decision

The Reviewing Panel identified no grounds to suggest that the order proposed in the Joint Submission could be contrary to the public interest.

The proposed penalty is in line with previous decisions of this Tribunal which dealt with similar conduct. Neither party suggested that the respondents engaged in an ongoing pattern of conduct including extra, non-negotiable, fees. Parties who do engage in such patterns of conduct may require stronger deterrence elements. That said, in this case the Reviewing Panel is satisfied that there are appropriate deterrence and rehabilitation elements contemplated in the Joint Submission.

Ontario Motor Vehicle Industry Council
Discipline Tribunal

Dated: August 29, 2024

A handwritten signature in black ink, appearing to be a stylized 'J' followed by a horizontal line and some trailing strokes.

Joe Wade, *Discipline Tribunal Chair*

Caroline Brett, Public Member

Stuart Sherman, Registrant Member

