

## 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

B E T W E E N :

REGISTRAR, MOTOR VEHICLE DEALERS ACT, 2002

- AND -

VANISHING POINT INC. o/a THE CAR CAFE

- and -

DAVE HACKER

- and -

BARBARA KELLY

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Pursuant to Rule 1.07 of the Rules of Practice before the Discipline Committee and the Appeals Committee, I, the Chair of the Discipline Committee, have 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:** March 12, 2020

**Findings:** Breach of Sections 7 and 9 of the Code of Ethics

**Order:**

1. The Dealer is ordered to pay a fine in the amount of \$1,000 no later than May 31, 2020.
2. Barbara Kelly is ordered to complete and pass the in-person automotive certification course no later than **May 31, 2020**.
3. 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 May 31, 2020. 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



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du commerce des  
véhicules automobiles

course after January 1, 2009, or who are otherwise required to do so pursuant to the Act.

4. The Dealer agrees to comply with the Act and Standards of Business Practice, as may be amended from time to time.

Written Reasons:

**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.

**Agreed Statement of Facts**

The parties to this proceeding agree that:

**Background:**

1. Vanishing Point Inc. o/a The Car Cafe (the "Dealer") was first registered as a motor vehicle dealer on or about September 15, 1982.
2. Dave Hacker ("Hacker") was first registered as a motor vehicle salesperson on or about June 27, 1997. At all material times, Hacker was the sole Director, as well as a person in charge of the day to day activities, of the Dealer.
3. Barbara Kelly ("Kelly") was first registered as a motor vehicle salesperson on or about March 17, 1992. At all material times, Kelly was a person in charge of the day to day activities, of the Dealer.

**Automotive Certification Course Completion**

4. On or about August 22, 2014, Kelly successfully completed the Automotive Certificate course (the "course").
5. Included in the course materials are the following requirements:
  - a. Dealer must maintain records relating to the trade of motor vehicles; and
  - b. Consignment agreements must be in writing.

**OMVIC Publications**

6. OMVIC issued the following Bulletins and Dealer Standards reminding dealers of their obligations relating to: maintaining written contracts and maintaining records relating to trades and/or trade-in:

<b><u>Dealer Standard:</u></b>	<b><u>Subject Matter:</u></b> Written	<b><u>Subject Matter:</u></b> Records relating to
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Publication Date	Contract	Trades and/or Trade-In
1 2015 Issue: 1		X
2 2017 Issue: 1	X	

### Dealer's Current Non-Compliance

#### Failure to Have Consignment Agreement and Trust Account

7. The Dealer advertised a 2005 Chevy Duramax for sale on behalf of a customer but failed to have a consignment contract as required for this trade. This is in breach of s. 45(1) and s. 53(1)(a) of O. Reg. 333/08 and s. 7(1) of the Code of Ethics.
8. The Dealer also failed to have a trust account which is required for holding funds relating to consignment sales. This is in breach of s. 25 of the Act and s. 7(1) of the Code of Ethics.

#### Failure to Maintain Records Relating to Trade

9. The Dealer sold the following two (2) motor vehicles on or about December 27, 2018 and failed to maintain copies of the records relating to these trades. This is in breach of s. 53(1)(e) of O. Reg. 333/08 and s. 7(1) and s. 9(1) of the Code of Ethics:
  - a. 2007 Toyota (VIN: JTDBT923571138620)
  - b. 2003 Honda Civic (VIN: JHLRD77893C809700)
10. Kelly has since agreed to successfully complete the Automotive Certification Course in person, by no later than May 31, 2020.

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

#### 25. Trust account

Every motor vehicle dealer shall,

- (a) maintain in Ontario, in accordance with the prescribed conditions, an account designated as a trust account, in,
- (i) a bank, or an authorized foreign bank, within the meaning of section 2 of the Bank Act (Canada),
  - (ii) a loan or trust corporation, or
  - (iii) a credit union, as defined in the Credit Unions and Caisses Populaires Act, 1994;

Regulation 333/08 of the Act:

#### 45. Contracts relating to sales on consignment:

- (1) A registered motor vehicle dealer shall not enter into a consignment contract for the sale of a motor vehicle, whether or not the consignor is a registered motor vehicle dealer, unless the contract is in writing.



53. Records relating to trades:

- (1) A registered motor vehicle dealer shall maintain records of,  
 (a) each consignment contract that the dealer enters into with respect to a motor vehicle.  
 (e) each sale by the dealer of a motor vehicle to a purchaser, including sales made through a motor vehicle dealer registered as a general dealer.

It is thereby agreed that the Dealer, Hacker and Kelly have breached sections 7 of the Code of Ethics, as set out in Regulation 332/08:

*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, Hacker and Kelly have breached section 9 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 agrees to pay a fine in the amount of \$1,000 no later than **May 31, 2020**.
2. Barbara Kelly agrees to complete and pass the in-person automotive certification course no later than **May 31, 2020**.
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 no later than May 31, 2020. 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.
4. The Dealer agrees to comply with the Act and Standards of Business Practice, as may be amended from time to time.

**Decision of the Chair**

Having reviewed and considered the Agreed Statement of Facts, the Chair of the Discipline Committee hereby concludes that the Dealer breached subsections 7 and 9 of the OMCV Code of Ethics, as set out in Ontario Regulation 332/08, made under the *Motor Vehicle Dealers Act, 2002*. The Chair of the Discipline Committee also agrees with the Parties' Joint Submission on Penalty and, accordingly, makes the following Order:



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  3. 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 May 31, 2020. 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.
  4. The Dealer agrees to comply with the Act and Standards of Business Practice, as may be amended from time to time.

Ontario Motor Vehicle Industry Council  
Discipline Committee



Paul Burroughs, Chair

