

DISCIPLINE DECISION

REVIEWING PANEL: Debra Mattina, Public Member
Joe Wade, Registrant
Paul Burroughs, 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-

1782998 ONTARIO INC. o/a NORTHWAY FORD LINCOLN

-AND-

PAUL TAVERNESE

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: December 15, 2023

Findings: The Dealer has contravened the following:
Sections 4(2) and 9(3) of the Code of Ethics, Ontario Regulation 332/08
Paul Tavernese has breached the following:
Sections 6(2) and 9(3) of the Code of Ethics, Regulation 332/08

Order:

1. The Dealer is ordered to pay a fine in the amount of \$8,000 no later than **February 29, 2024.**
2. Tavernese is ordered to successfully complete the MVDA KEY Elements

course (the “Course”), no later than **February 29, 2024**.

3. 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 **February 29, 2024**. 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 and Tavernese agree to comply with the Act, the Code of Ethics as set out in Regulation 332/08, 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. 1782998 Ontario Inc. o/a Northway Ford Lincoln (the “Dealer”) is currently registered as a motor vehicle dealer under the Act. It was originally registered on or about December 12, 2012.
2. Paul Tavernese (“Tavernese”) is currently registered as a motor vehicle salesperson under the Act. He was originally registered on or about November 6, 2002.
3. At all material times, Tavernese has been the person-in-charge of the day-to-day activities of the Dealer.

OMVIC Publications:

4. Since Tavernese was registered as a motor vehicle salesperson in or around November 2002, OMVIC has issued numerous publications reminding dealers of their obligations to advertise their vehicles accurately describe the vehicle price on advertisements. These publications are described in Schedule A.
5. On or about May 7, 2018, OMVIC issued a bulletin reminding dealers that charges such as tire fees and freight fees should not be added to demonstrator vehicle prices.

2021 Inspection:

6. On or about December 14, 2021, an inspector conducted an inspection of the Dealer’s

books and records.

7. That inspection revealed numerous violations of the Act, Ontario Regulation 333/08 and the Code of Ethics as particularized and explained below.

All-in pricing non-compliance:

8. On or before November 22, 2021, the Dealer advertised the following five vehicles but failed to include the Dealer's \$599 administration fee as well as the \$10 OMVIC fee in the advertised price:

<u>Vehicle</u>	<u>VIN</u>
a. 2021 Ford F150 1FTFW1E87MFC67121	
b. 2022 Ford Maverick 3FTTW8F97NRA01671	
c. 2022 Ford Maverick 3FTTW8F97NRA13268	

This is contrary to section 36(7) of Ontario Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics.

9. The Dealer has since refunded the above referenced purchasers the amount they were over charged regarding the advertised prices of their vehicles.

Bill of Sale Disclosure Issues

10. Between on or about February 25, 2021, and May 19, 2021, the Dealer sold two demonstrator vehicles. However, on the corresponding bills of sale, the Dealer incorrectly identified these vehicles as "new", contrary to sections 4 and 9 of the Code of Ethics. These vehicles are described below:

<u>Vehicle</u>	<u>VIN</u>
a. 2020 Lincoln Nautilus	2LMPJ8K94LBL08202
b. 2020 Lincoln Aviator	5LM5J7XCXLGL19048

"New Vehicle" Fees

11. Between on or about February 25, 2021, and May 19, 2021, the Dealer charged a "tire fee" and a "freight fee" to consumers for the sale of the two vehicles described in the above paragraph, contrary to sections 4 and 9 of the Code of Ethics.
12. These "tire fees" and "freight fees" are typically associated with new vehicles and should not be applied to the purchase of used or demonstrator vehicles.

Tavernese's Contravention of the Code of Ethics:

13. As the person in charge of the day-to-day activities of the Dealer, Tavernese failed to ensure that the Dealer conducted its business in compliance with the Act, Regulations

and Code of Ethics. Tavernese therefore personally contravened sections 6 and 9 of the Code of Ethics

14. By failing to comply with the following section of Regulation 333/08:

36. Advertising

(7) If an advertisement indicates the price of a motor vehicle, the price shall be set out in a clear, comprehensible and prominent manner and shall be set out as the total of,

- (a) the amount that a buyer would be required to pay for the vehicle; and*
- (b) subject to subsections (9) and (10), all other charges related to the trade in the vehicle, including, if any, charges for freight, charges for inspection before delivery of the vehicle, fees, levies and taxes.*

15. It is thereby agreed that the Dealer has contravened the following section of the Code of Ethics, as set out in Regulation 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.

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

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.

17. It is thereby agreed that Tavernese has contravened the following section of the Code of Ethics, as set out in 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.

Decision of the Reviewing Panel

Having reviewed and considered the Agreed Statement of Facts, as well as the additional submissions provided by the Parties, 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 subsections 4(2) and 9(3) of the OMVIC Code of Ethics, and Tavernese has

breached subsections 6(2) and 9(3), as set out in Ontario Regulation 332/08, made under the *Motor Vehicle Dealers Act, 2002*.

Upon determining that the Dealer had breached the Code of Ethics as set out above the panel proceeded to address the conduct with a view to assessing whether or not the proposed Joint Submission on Penalty was appropriate.

The panel noted that demonstrator vehicles had been misrepresented as "New" by the Dealer rather than "Used". The Dealer and Tavernese's failure to disclose this factual information materially misrepresented the vehicle history. This history could have been a determining factor in the consumers decision on whether or not to purchase the vehicle. The Dealers' failure to disclose it denied the consumer of their right to make an informed decision.

Additionally the panel noted that the dealer had failed to advertise ALL INCLUSIVE pricing as set out in the regulations. In the Agreed Statement of Facts (ASF) the dealer acknowledged that they failed to include the Dealer's \$599 administration fee as well as the \$10 OMVIC fee in the advertised price. This information was revealed in an inspection of the Dealership and was a factor in the three vehicle advertisements set out in paragraph 8 of the ASF.

Further, the Panel noted that the Dealer charged a "tire fee" and a "freight fee" for two used vehicles (2020 Lincoln Nautilus and a 2020 Lincoln Aviator) identified in paragraph 10 of the ASF. Typically these fees would be applied to New vehicles, however the two vehicles in question were demonstrator vehicles which should not have been sold as new but rather used and therefore not subject to the tire and freight fee.

The panel noted that the Dealer misrepresented service date changes on one of the vehicles which caused misinformation to be provided to the consumer on the remaining warranty length.

All of these issues demonstrate to the Panel that there are some significant lapses in the Dealerships adherence to the Code of Ethics. The panel is of the opinion that the regulations breached in this case involve clauses that are sufficiently well known to the industry that contravention should not be occurring with this frequency in a well established Dealership. The Panel would have appreciated hearing of some policy measures implemented by the Dealer to avoid reoccurring contravention of the Code of Ethics. Such actions support the premise that a Dealership accepts their errors and is determined to eliminate such occurrences by implementing policies and/or procedures to circumvent them.

However, while the Panel is of the view that the penalties agreed to are somewhat on the low end of the range of appropriate penalty, the Panel acknowledges that the Dealer did make some effort to make customers whole by refunding overcharged amounts in excess of the advertised price as identified in paragraph 9 of the ASF.

The panel encourages the parties to provide robust submissions on why the panel should accept the JSOP in a more fulsome manner providing more detailed input to address the mitigating and aggravating circumstances of the case. The panel would like the parties to understand that the Panel takes seriously that there is a very high bar in place to go behind an agreement, however there will come a case when the penalty simply cannot be justified. Penalties need to be commensurate with the quantity and seriousness of violations and be significant enough in current dollar value so as not to undermine consumer confidence. Penalty needs to speak directly to the integrity of the discipline process.

It is difficult to measure the intangible of whether penalty is significant enough or not to deter further contraventions of ethical standards. However, in light of the efforts the Dealership made in terms of restitution, combined with the terms set out in the agreement, the Reviewing Panel accepts the Parties' Joint Submission on Penalty and accept that the penalty is in the public interest and serves as a general and specific deterrence.

Accordingly, the Reviewing panel makes the following Order:

1. The Dealer is ordered to pay a fine in the amount of \$8,000 no later than **February 29, 2024.**
2. Tavernese is ordered to successfully complete the MVDA KEY Elements course (the "Course"), no later than **February 29, 2024.**
3. 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 **February 29, 2024.** 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 and Tavernese agree to comply with the Act, the Code of Ethics as set out in Regulation 332/08, and Standards of Business Practice, as may be amended from time to time.

Ontario Motor Vehicle Industry Council
Discipline Committee

Dated: January 24, 2024

A handwritten signature in black ink, appearing to read 'Joe Wade', written over a horizontal line.

Joe Wade, *Discipline Committee Chair*

On behalf of
Debra Mattina, *Public Member*
Paul Burroughs, *Member*

