

DISCIPLINE DECISION

REVIEWING PANEL: Paul Burroughs, Registrant
Caroline Brett, Public Member
Nelson Caetano 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-

147766 CANADA LTD o/a WINDSOR HONDA

-AND-

KENNETH EANSOR

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: August 23, 2022

Findings: Breach of Sections 4, 6 and 9 of the Code of Ethics

Order:

1. The Dealer is ordered to pay a fine in the amount of \$3,000 no later than **September 30, 2022.**
2. Eansor is ordered to successfully complete the MVDA KEY Elements course no later than **September 30, 2022.**
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 **September 30, 2022.** 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 is ordered to ensure all sales staff employed by the Dealer have reviewed the August 2017 OMVIC advertising webinar. The Dealer will provide OMVIC with written confirmation from said staff that this has occurred, no later than **September 30, 2022.**
5. The Dealer and Eansor 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. In addition, OMVIC confirmed to the Reviewing Panel the registrant's contention in their response to the NOC that there was a typographical error in the Notice of Complaint with regard to Item 7a. and b. which are corrected in the Agreed Statement of Facts.

Agreed Statement of Facts

Background:

Pursuant to section 14(4)4 of the Motor Vehicle Dealers Act, 2002 (the "MVDA"), a Notice of Complaint was issued on March 29, 2022, by the Registrar, MVDA against 147766 Canada Ltd o/a Windsor Honda and Kenneth Eansor for violating the Code of Ethics. as set out in Ontario Regulation 332/08.

The Notice of Complaint was referred to the Discipline Committee to hear and determine whether the aforementioned parties failed to comply with the Code of Ethics.

Pursuant to section 4.1 of the Statutory Powers Procedure Act and Rule 1.07 of the Discipline Committee's Rules of Practice, the Parties wish to dispose of this proceeding without a hearing, according to the following Agreed Statement of Facts and Penally.

1. 147766 Canada Ltd o/a Windsor Honda (the "Dealer") was first registered as a motor vehicle dealer in or around January 1986.
2. Kenneth Eansor ("Eansor") was first registered as a motor vehicle salesperson in or around March 1984. Since in or around October 2014, Eansor was an officer, as well as the person in charge of the day-to-day activities, of the Dealer.

3. Eansor successfully completed the Automotive Certification course (the "Course") on or about October 23, 2014. Included in the Course syllabus are dealers' advertising obligations, including but not limited to, all-in advertised vehicle pricing ("all-in pricing").

OMVIC registrant education re: all-in pricing

4. Since the Act was proclaimed, OMVIC has issued various publications and webinars reminding dealers of the all-in pricing requirements. The dates of said publications are attached hereto as Schedule A. All these publications continue to be available on OMVIC's website.

Previous correspondence with the Dealer

5. During an inspection on or about November 7, 2011, a representative of the Registrar reminded the Dealer of the all-in pricing requirements.

Dealer's Contravention of the Code of Ethics

6. On or about October 21, 2021, OMVIC representatives made inquiries about a 2018 Chevrolet Camaro (Stock #TR0134A), while posing as members of the public. This vehicle was advertised with a selling price of \$33,333 exclusive of tax and licensing fees.
7. A representative of Dealer advised the OMVIC investigators that the above referenced advertised vehicle price was not inclusive of the following additional fees:
 - a. \$499 PCP fee
 - b. \$10 OMVIC fee
8. When the OMVIC investigators inquired about the "\$499 PCP fee", the Dealer representative advised it was an "administration fee" and included "four oil changes and tire and rim warranty". The additional fees were not presented as optional at this time.
9. As such, the advertised price was not all-inclusive. This was contrary to section 36(7) of Ontario Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics.

Eansor's Contraventions of the Code of Ethics

10. Eansor failed to ensure that the Dealer conducted its business in compliance with the Act and Code of Ethics and thus personally contravened sections 6 and 9 of the Code of Ethics.

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.

Professionalism

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

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 Eansor 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.

Joint Submission on Penalty

1. The Dealer agrees to pay a fine in the amount of \$3,000 no later than **September 30, 2022.**
2. Eansor agrees to successfully complete the MVDA KEY Elements course no later than **September 30, 2022.**
3. The Dealer agrees 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, 2022.** 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 ensure all sales staff employed by the Dealer have reviewed the August 2017 OMVIC advertising webinar. The Dealer will provide OMVIC with written confirmation from said staff that this has occurred, no later than **July 31, 2022.**
5. The Dealer and Eansor 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 subsections 4 and 9 and Eansor has breached subsection 6 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 \$3,000 no later than **September 30, 2022.**
2. Eansor is ordered to successfully complete the MVDA KEY Elements course no later than **September 30, 2022.**
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 **September 30, 2022.** 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 is ordered to ensure all sales staff employed by the Dealer have reviewed the August 2017 OMVIC advertising webinar. The Dealer will provide OMVIC with written confirmation from said staff that this has occurred, no later than **September 30, 2022.**
5. The Dealer and Eansor agree 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



Dated: August 23, 2022

Paul Burroughs, Chair

On behalf,

Caroline Brett, Member
Nelson Caetano, Member

