

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

BETWEEN:

REGISTRAR, *MOTOR VEHICLE DEALERS ACT, 2002*

- AND -

PAUL, NEIL o/a PRECISION AUTO SERVICES

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: August 29, 2019

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

Order:

1. The Dealer is ordered to pay a total fine amount of \$1,000.00 in two separate installments of \$500.00. The first installment to be paid no later than **September 30, 2019** and the remaining balance to be paid no later than **December 30, 2019**.
2. 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 **September 30, 2019**. Future sales staff will be offered the Course within 90 days of being retained in this capacity by the Dealer. 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.
3. 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:

1. Paul, Neil o/a Precision Auto Services (the "Dealer") was first registered as a motor vehicle dealer in about May 2001. At all material times Neil Paul ("Paul") was the sole proprietor.

OMVIC publications:

2. In the winter of 2008, OMVIC issued a Dealer Standard publication which highlighted some of the upcoming changes which would take place when the *Motor Vehicle Dealers Act, 2002* (the "Act") came into effect. This included the obligation for dealers to provide purchasers with written disclosure of a vehicle's history and condition, such as accident repair histories and previous out of province registrations ("disclosure obligations").
3. OMVIC further issued the following Dealer Standard publications reminding dealers of their disclosure obligations:
 - a. Summer 2011
 - b. Summer 2012
 - c. Summer 2013
 - d. Issue #4 2014
 - e. Issue #4 2016
4. Furthermore, OMVIC issued the following dealer bulletins which also reminded dealers of their disclosure obligations:
 - a. January 2010
 - b. December 2013

Direct correspondence with Dealer:

5. During an inspection on about September 24, 2010, a representative of the Registrar reviewed with the Dealer, the Dealer's disclosure obligations.
6. During an inspection which commenced on about February 9, 2016 and was completed on about March 2, 2016, a representative of the Registrar reviewed with the Dealer, the Dealer's disclosure obligations. Specifically, the Dealer was advised of his obligation to provide, in writing on the bill of sale, all required disclosures, including but not limited to, the dollar amount of accident damage a vehicle has sustained.



7. By letter dated April 5, 2016, the Dealer was again reminded of his disclosure obligations. Specifically, the Dealer was advised of his obligation to disclose to purchasers the dollar amount of accident damage their vehicle had sustained, as well as whether or not their vehicle had been declared by an insurer to be a total loss.
8. During an inspection of the Dealer on about October 31, 2018, the following non-compliance issues were revealed:

Non-compliant vehicle trades:

9. On about June 20, 2018 the Dealer purchased a 2008 Pontiac Wave, (VIN KL2TD55628B268854) with the following declarations:
 - a. Vehicle has been declared a total loss by the insurer
 - b. The manufacturer's warranty has been cancelled
 - c. Repair Estimate: \$4,356
 - d. Total distance driven is unknown, but as of 6/12/2018 it was believed to be 173,472 km. The total distance driven is believed to be higher than the distance indicated. *Odometer is: Good

On or about August 23, 2018, the Dealer, sold this vehicle without disclosing a, c, or d, above. This is contrary to sections 42(4), 42(19), 42(21), and 42(25) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics.

The Dealer has since attempted to reach out to the purchaser to advise them of their vehicle's history.

10. As of April 4, 2019 the Dealer provided confirmation that they successfully completed the MVDA Key Elements course offered by the Automotive Business School of Canada (ABSC) and OMVIC.

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

Additional Information in contracts of sale and leases

42 (4) If a motor vehicle is a used motor vehicle and the registered motor vehicle dealer cannot determine the total distance that the vehicle has been driven but can determine the distance that the vehicle has been driven as of some past date, a statement of that distance and date, together with a statement that the total distance that the vehicle has been driven is believed to be higher than that distance.

42 (19) If the total costs of repairs to fix the damage caused to the motor vehicle by an incident exceed \$3,000, a statement to that effect and if the registered motor vehicle dealer knew the total costs, a statement of the total costs.

42 (21) If the motor vehicle was declared by an insurer to be a total loss, regardless of whether the vehicle was classified as irreparable or as salvage under section 199.1 of the *Highway Traffic Act*, a statement to that effect.



42 (25) Any other fact about the motor vehicle that, if disclosed, could reasonably be expected to influence the decision of a reasonable purchaser or lessee to buy or lease the vehicle on the terms of the purchase or lease.

It is thereby agreed that the Dealer has breached the following sections of the Code of Ethics:

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.

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, dishonorable, unprofessional or unbecoming of a registrant.

Joint Submission on Penalty

1. The Dealer agrees to pay a total fine amount of \$1,000.00 in two separate installments of \$500.00. The first installment to be paid no later than **September 30, 2019** and the remaining balance to be paid no later than **December 30, 2019**.
2. 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 **September 30, 2019**. Future sales staff will be offered the Course within 90 days of being retained in this capacity by the Dealer. 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.
3. 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 OMVIC 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:

1. The Dealer is ordered to pay a total fine amount of \$1,000.00 in two separate installments of \$500.00. The first installment to be paid no later than **September 30, 2019** and the remaining balance to be paid no later than **December 30, 2019**.
2. 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 **September 30, 2019**. Future sales staff will be offered the Course within 90 days of being retained in this capacity by the Dealer. 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.



3. 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

