

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 -

WMZ AUTO SALES

-and-

WAZMA YOUSUFZAY

-and-

JAWED YOUSUFZAY

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: September 21, 2020

Findings: Breach of Sections 6, 7 and 9 of the Code of Ethics

Order:

1. The Dealer is ordered to pay a fine in the amount of \$2,500 no later than **November 6, 2020**.
2. Wazma is ordered to pay a fine in the amount of \$500 no later than **November 6, 2020**.
3. Jawed is ordered to pay a fine in the amount of \$500 no later than **November 6, 2020**.
4. Wazma is ordered to complete the MVDA Key Elements Course, no later than **March 5, 2021**.

5. The Dealer is ordered to offer all current and future sales staff the opportunity to complete the OMVIC Automotive Certification Course (the "Course"). Current sales staff will be offered the Course no later than **November 6, 2020**. 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.
6. The Dealer, Wazma, and Jawad agree 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. WMZ Auto Sales (the "Dealer") was first registered as a motor vehicle dealer in around April 2005. Wazma Yousufzay ("Wazma") was first registered as a motor vehicle salesperson in around February 27, 2007. Since that date Wazma has been the director of the Dealer. Jawed Yousufzay ("Jawed") was first registered as a motor vehicle salesperson in around April 1, 2016.
2. On or about March 31, 2016 Wazma and Jawed executed terms and conditions of registration on behalf of the Dealer. As per conditions "5" and "6," Jawed and Wazma agreed that Jawed is under a positive obligation to provide purchasers with written disclosure of all material facts about the vehicles they sell on the bill of sale. As well, that all trades in motor vehicles are completed in accordance with sections 40, 41, and 42 of the MVDA.
3. On or about April 1, 2016 Jawed successfully completed the OMVIC Automotive Certification Course ("Course"). Included in the Course was the following subject material;
 - Vehicle Condition Disclosure (Section 42 of the MVDA)
 - Credit Requirements (Section 41 of the MVDA)

OMVIC publications:

4. In the winter of 2008, OMVIC issued a Dealer Standard publication highlighting some of the changes that would take place when the Act was proclaimed, including but not

limited to, a dealers' requirement to provide purchasers with written and detailed disclosure of all material facts about the vehicles they sell ("disclosure obligations").

5. OMVIC further issued the following Dealer Standard publications reminding dealers of their disclosure obligations:

- a. Winter 2008
- b. Spring 2009
- c. Summer 2011
- d. Summer 2012
- e. Winter 2012
- f. Summer 2013
- g. Winter 2013
- h. Issue #4 2014
- i. Issue #3 2016
- j. Issue #4 2016
- k. Issue #3 2017
- l. Issue #3 2018
- m. Issue #1 2019
- n. Issue #2 2019

6. OMVIC also issued the following dealer bulletins to remind dealers of their credit and material fact disclosure obligations:

- a. December 2008
- b. January 2010
- c. June 2010
- d. September 2012
- e. December 2013

Non-compliant vehicle trades:

7. During an inspection on or about March 19, 2019, a representative of the Registrar discovered the following non-compliant vehicle trades:

- a. On or about September 10, 2018, Jawed sold a 2013 Ram 1500 (VIN – 1C6RR6FG2DS516205) on behalf of the Dealer. Jawed failed to disclose the required credit information on the bill of sale. This is contrary to Jawed's terms and conditions of registration, as well as section 40(1) of Regulations 333/08, and sections 7 and 9 of the Code of Ethics.
- b. On or about September 19, 2018, Jawed sold a 2008 Dodge Ram 1500 (VIN – 1D7HU182X8J217828) on behalf of the Dealer. The Dealer purchased this vehicle with a disclosure of "Structural Alteration." Jawed failed to provide the purchaser with written disclosure of the vehicle's previous history. This is contrary to Jawed's terms and conditions of registration, as well as section 42(10), and 42 (25) of Regulations 333/08, and sections 7 and 9 of the Code of

Ethics. The Dealer has since provided OMVIC with confirmation that the purchaser was made aware of their vehicle's history.

- c. On or about December 14, 2018, Jawed sold a 2008 GMC (VIN – 2GTGK19J381105701) on behalf of the Dealer. The Dealer purchased this vehicle with a disclosure of "Structural Damage." Jawed failed to provide the purchaser with written disclosure of the vehicle's previous history. This is contrary to Jawed's terms and conditions of registration, as well as section 42(10), and 42 (25) of Regulations 333/08, and sections 7 and 9 of the Code of Ethics. The Dealer since provided OMVIC with confirmation that the transaction was rescinded, and that the consumer was refunded. The Dealer then sold the vehicle to the next purchaser and provided OMVIC with confirmation that they received the required written disclosure of their vehicle's history.
8. Wazma has failed to ensure the Dealer conducts its motor vehicle trades in compliance with the Regulations and Code of Ethics. As such, Wazma has personally contravened section 6 and 9 of the Code of Ethics.
9. Jawed has failed to ensure the Dealer conducts its motor vehicle trades in compliance with the Regulations and Code of Ethics. As such, Jawed has personally contravened his terms and conditions as well as section 6 and 9 of the Code of Ethics.

By failing to comply with the following:

Regulation 333/08

40. Contracts for Sales of Used Motor Vehicles

1. Before entering into a contract to sell a used motor vehicle to a purchaser who is not a registered motor vehicle dealer, a registered motor vehicle dealer shall ensure that the person providing financing for the purchase has provided to the purchaser the information that must be disclosed in any initial disclosure statement required under section 79 of the Consumer Protection Act, 2002 with respect to the financing if,
 - (b) the dealer is providing the financing or the application for the financing to the purchaser.

42. Additional Information in Contracts of Sales and Leases

2. If there has been structural damage to the motor vehicle or any repairs, replacements or alterations to the structure of the vehicle, a statement to that effect.
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, 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.

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 Wazma and Jawed have breached the following sections of the Code of Ethics as set out in Regulation 332.08:

Accountability

6(1). A registered motor vehicle dealer shall ensure that every registered salesperson that the dealer employs or retains to act as a salesperson carries out his or her duties in compliance with this Regulation.

(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.

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 is ordered to pay a fine in the amount of \$2,500 no later than **November 6, 2020**.
2. Wazma is ordered to pay a fine in the amount of \$500 no later than **November 6, 2020**.
3. Jawed is ordered to pay a fine in the amount of \$500 no later than **November 6, 2020**.
4. Wazma is ordered to complete the MVDA Key Elements Course, no later than **March 5, 2021**.
5. The Dealer is ordered to offer all current and future sales staff the opportunity to complete the OMVIC Automotive Certification Course (the "Course"). Current sales staff will be offered the Course no later than **November 6, 2020**. 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.

6. The Dealer, Wazma, and Jawad agree 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, Wazma and Jawad breached subsections 6, 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 fine in the amount of \$2,500 no later than **November 6, 2020**.
2. Wazma is ordered to pay a fine in the amount of \$500 no later than **November 6, 2020**.
3. Jawad is ordered to pay a fine in the amount of \$500 no later than **November 6, 2020**.
4. Wazma is ordered to complete the MVDA Key Elements Course, no later than **March 5, 2021**.
5. The Dealer is ordered to offer all current and future sales staff the opportunity to complete the OMVIC Automotive Certification Course (the "Course"). Current sales staff will be offered the Course no later than **November 6, 2020**. 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.
6. The Dealer, Wazma, and Jawad 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



Paul Burroughs, Chair