

## 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 -

HUBERT WALSH AUTO SALES LTD.

- AND -

HUBERT WALSH

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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 5, 2015

**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 \$2,000 within 90 days of the date of the Discipline Committee Order.
2. Walsh is ordered to successfully complete the OMVIC certification course within 90 days of the date of the Discipline Committee Order. The Dealer will pay all costs associated with this.
3. The Dealer is ordered to offer all future sales staff the opportunity to complete the course. Current sales staff will be offered the course within 90 days of the Discipline Committee Order. Future sales staff will be offered the course within 90 days of being retained in this capacity by the Dealer. The Dealer will pay all costs associated with this. It is understood between the parties this clause does not apply to sales staff who have completed the course or who are otherwise required to do so pursuant to the Act.
4. The Dealer shall comply with the *Motor Vehicle Dealers Act, 2002* 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. Hubert Walsh Auto Sales Ltd. (the "Dealer") was first registered as a motor vehicle dealer in or around November 1987. Hubert Walsh ("Walsh") was first registered as a motor vehicle salesperson in or around August 1983. At all material times, Hubert Walsh was the sole Director and the person in charge at the Dealer.
2. In the winter of 2008 and the spring of 2009, OMVIC issued Dealer Standard publications which highlighted some of the upcoming changes that would take place when the *Motor Vehicle Dealers Act, 2002* (the "Act") came into effect. In addition to this, dealers were reminded of their obligation to provide purchasers with written disclosure of vehicles accident history and condition, previous out of province registrations, vehicles branded salvage, rebuilt or irreparable, and vehicles previously used as a police cruiser.
3. Once the Act came into effect, the following Dealer Standard publications further reminded dealers of their obligations to provide consumers with written disclosure of vehicles accident history and condition, previous out of province registrations, vehicles branded salvage, rebuilt or irreparable, previous daily rental history and vehicles being previously used as a police cruiser:
  - a. Summer 2011
  - b. Summer 2012
  - c. Winter 2013
  - d. Fall 2013
4. Furthermore, OMVIC issued the following dealer bulletins that which also reminded dealers of their obligations to provide consumers with written disclosure of vehicle's history and condition, previous out of province registrations and previous daily rental history.
  - a. December 2008
  - b. January 2010
  - c. September 2012
  - d. December 2013



5. During and inspection on or about September 20, 2007, a representative of the Registrar reminded the Dealer to provide purchasers with written disclosure of all material facts about the vehicle it sells, including but not limited to, disclosure of a vehicles being previously used as a police cruiser.
6. During an inspection on or about August 1, 2008, a representative of the Registrar reminded the Dealer to provide purchasers with written disclosure of all material facts about the vehicles it sells.
7. During an inspection on or about September 24, 2009, a representative of the Registrar reminded the Dealer to provide purchasers with written disclosure of all material facts about the vehicles it sells.
8. On or before August 16, 2013, the Dealer purchased a 2011 Nissan Maxima (VIN 1N4AA5AP5BC827705). This vehicle was previously registered in the United States and branded Salvage. On or about August 15, 2013, the Dealer sold this vehicle without providing the purchaser with written disclosure of the vehicles out of province history or the vehicles branding. This is contrary to sections 42(22) and 42(23) of Regulation 333/08, as well as section 7 and 9 of the Code of Ethics. The Dealer has subsequently provided confirmation that the purchaser was verbally informed of the vehicle's out of province and branding history.
9. On or before January 11, 2013, the Dealer purchased a 2009 Chevrolet Tahoe (VIN 1GNFK03039R233001). This vehicle was previously used as a police cruiser. Furthermore, this vehicle was declared as having a \$4,258 accident history. On or about January 11, 2013, the Dealer sold this vehicle without providing the purchaser with written disclosure of the vehicles previous use and accident history. This is contrary to sections 42(7) and 42(19) of Regulation 333/08, as well as section 7 and 9 of the Code of Ethics. The Dealer has subsequently made an effort to make further written disclosures to this purchaser regarding the vehicle's daily use and accident history.

By failing to comply with the following regulation under the *Motor Vehicle Dealers Act, 2002, 333/08*:

### **Disclosure**

#### **42. Additional information in contracts of sale and leases.**

(7) If any of the following is true of the motor vehicle, a statement to that effect that the vehicle was previously,

- i. leased on a daily basis, unless the vehicle was subsequently owned by a person who was not registered as a motor vehicle dealer under the *Motor Vehicle Dealers Act* or the *Motor Vehicle Dealers Act, 2002*
- ii. used as a police cruiser or used to provide emergency services, or
- iii. used as a taxi or limousine.



(19) If the total costs of repairs to fix the damage caused to a 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.

(22) If the motor vehicle previously received treatment in a jurisdiction other than Ontario that was equivalent to having had a permit issued under section 7 of the *Highway Traffic Act* or having been traded in Ontario, a statement to that effect and a statement of which jurisdictions, except if one or more permits have been issued for the vehicle under section 7 of that Act to cover at least the seven previous consecutive years.

(23) If the motor vehicle has been classified, under section 199.1 of the *Highway Traffic Act*, as irreparable, salvage or rebuilt, a statement as to how it was last classified.

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

7. A registrant shall ensure that all documents used by the registrant in the course of trade in a motor vehicle are current and comply with the law.

9. 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 \$2,000 within 90 days of the date of the Discipline Committee Order.
2. Walsh agrees to successfully complete the OMVIC certification course ("course"), within 90 days of the date of the Discipline Committee Order. The Dealer will pay all costs associated with this.
3. The Dealer agrees to offer all future sales staff the opportunity to complete the course. Current sales staff will be offered the course within 90 days of the Discipline Committee Order. Future sales staff will be offered the course within 90 days of being retained in this capacity by the Dealer. The Dealer will pay all costs associated with this. It is understood between the parties this clause does not apply to sales staff who have completed the course or who are otherwise required to do so pursuant to the Act.
4. The Dealer agrees to comply with the *Motor Vehicle Dealers Act, 2002* 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 and Walsh 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 fine in the amount of \$2,000 within 90 days of the date of the Discipline Committee Order.
2. Walsh is ordered to successfully complete the OMVIC certification course ("course"), within 90 days of the date of the Discipline Committee Order. The Dealer will pay all costs associated with this.
3. The Dealer is ordered to offer all future sales staff the opportunity to complete the course. Current sales staff will be offered the course within 90 days of the Discipline Committee Order. Future sales staff will be offered the course within 90 days of being retained in this capacity by the Dealer. The Dealer will pay all costs associated with this. It is understood between the parties this clause does not apply to sales staff who have completed the course or who are otherwise required to do so pursuant to the Act.
4. The Dealer shall comply with the *Motor Vehicle Dealers Act, 2002* and Standards of Business Practice, as may be amended from time to time.

Ontario Motor Vehicle Industry Council  
Discipline Committee



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Catherine Poultney, Chair

