

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 -

HOGAN CHEVROLET BUICK GMC LIMITED

- AND -

JORGE DESOUSA

- AND -

ANDREW FOSS

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: June 8, 2015

Findings: Breach of Sections 4 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. The fine is payable to the Ontario Motor Vehicle Industry Council.
2. Desousa and Foss are 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 registered salespeople the opportunity to 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. Future sales staff will be offered the course within 90 days if 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 after January 1, 2009, or who are otherwise required to do so pursuant to the Act.

4. The Dealer shall ensure that all future advertising is in compliance with *Motor Vehicle Dealers Act, 2002* and Standards of Business Practice, as may be amended from time to time.
5. 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. Hogan Chevrolet Buick GMC Limited (the "Dealer") was first registered as a motor vehicle dealer in or around March 1983. Jorge Desousa ("Desousa") was first registered as motor vehicle salesperson in or around April 1995. At all material times Desousa has been the person in charge of the Dealer. Andrew Foss ("Foss") was first registered as a motor vehicle salesperson in or around June 1982 and at all material times has been the officer and director of the Dealer.

Previous Discipline decision:

2. On or about August 30, 2012, OMVIC issued a Notice of Complaint ("Notice") against the Dealer, regarding non-compliance of sections 4 and 9 of the Code of Ethics.

On or about October 22, 2012, the above mentioned Notice was settled, pursuant to a negotiated resolution. As per condition 5, the Dealer agreed to ensure that all future advertising is in compliance with the MVDA and Standards of Business Practice, as may be amended from time to time. Furthermore, as per condition 6, the Dealer agreed to comply with the MVDA and Standards of Business Practice.

Dealer non-compliance:

3. On or before November 27, 2014, the Dealer published a flyer that did not disclose all inclusive vehicle prices, contrary to sub section 36(7) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics.



4. The Dealer has since agreed that all individuals in a position of authority will attend the OMVIC advertising seminar, to be scheduled at a mutually convenient time.

By failing to comply with the following regulations under the *Motor Vehicle Dealers Act, 2002*:

Advertising

36. (1) A registered motor vehicle dealer to whom this section applies shall ensure that any advertisement placed by the dealer complies with this section.

(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.

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

4. A registrant shall be clear and truthful in describing the features, benefits and prices connected with the motor vehicles in which the registrant trades and in explaining the products, services, programs and prices connected with those vehicles.

(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.

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. The fine is payable to the Ontario Motor Vehicle Industry Council.
2. Desousa and Foss agree to 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 agrees to offer all registered salespeople the opportunity to 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. Future sales staff will be offered the course within 90 days if 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 after January 1, 2009, or who are otherwise required to do so pursuant to the Act.

4. The Dealer agrees to ensure that all future advertising is in compliance with *Motor Vehicle Dealers Act, 2002* and Standards of Business Practice, as may be amended from time to time.
5. 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, Desousa and Foss breached subsections 4 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. The fine is payable to the Ontario Motor Vehicle Industry Council.
2. Desousa and Foss are 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 registered salespeople the opportunity to 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. Future sales staff will be offered the course within 90 days if 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 after January 1, 2009, or who are otherwise required to do so pursuant to the Act.
4. The Dealer shall ensure that all future advertising is in compliance with *Motor Vehicle Dealers Act, 2002* and Standards of Business Practice, as may be amended from time to time.
5. 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



Catherine Poultney, Chair

