

DISCIPLINE DECISION

REVIEWING PANEL: Sherry Darvish, Discipline Tribunal Chair, Public Member
Joe Wade, Registrant
Jon Lemaire, Registrant

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 :

ONTARIO MOTOR VEHICLE INDUSTRY COUNCIL)
)
- and -)
)
CUSTOMER IS KING MOTORS LTD. o/a LALLY KIA)
)
- and -)
)
ADAM VINCENT LALLY)
)
)
)

This matter proceeded by way of Rule 1.07 of the Rules of Practice before the Discipline Tribunal and the Appeals Tribunal. This Reviewing Panel has reviewed and considered written materials from the Parties together with a waiver of the requirement for an oral hearing and hereby makes the following Order:

Date of Decision: December 10, 2024

Findings: **Customer is King Motors Ltd. o/a Lally Kia (the “Dealer”) has breached the following:**

- Sections 4(2) and 9(3) of the Code of Ethics, O. Reg. 332/08

Adam Vincent Lally (“Lally”) has breached the following:

- Sections 6(2) and 9(3) of the Code of Ethics, O. Reg. 332/08

Order:

1. Customer Is King Motors Ltd. (the “Dealer”) shall pay a fine in the amount of **\$4,500** no later than ninety (90) calendar days from December 10, 2024.
2. Adam Vincent Lally (“Lally”) shall pay a fine in the amount of **\$500** no later than ninety (90) calendar days from December 10, 2024.
3. Lally shall successfully complete the MVDA Key Elements Course no later than ninety (90) calendar days from December 10, 2024.
4. The Dealer shall **offer** to all current and future salespersons, employed by the Dealer, to **fund** their completion of the Automotive Certification Course, no later than ninety (90) calendar days from December 10, 2024.
5. The Dealer and Lally shall comply with the *Motor Vehicle Dealers Act, 2002*, O. Reg. 333/08, O. Reg. 332/08 and its Code of Ethics, and the Standards of Business Practice.

Overview

This matter proceeded on the basis of an Agreed Statement of Facts, dated August 23, 2024, a jointly proposed disposition and a waiver of oral hearing, pursuant to Rule 1.07 of the Rules of Practice before the Discipline Tribunal and the Appeals Tribunal. The Agreed Statement of Facts states in relevant part as follows:

Background:

1. Customer Is King Motors Ltd. o/a Lally Kia (the “Dealer”) was first registered as a motor vehicle dealer in and around October 2012.
2. Adam Vincent Lally (“Lally”) was first registered as a salesperson in and around May 2004. At all material times, Lally was a General Manager, Director as well as the Person in Charge of the day-to-day activities of the Dealer.

OMVIC Publications:

3. Since the *Motor Vehicle Dealers Act, 2002* (the “Act”) was proclaimed in 2010, OMVIC has issued various educational materials, including publications, webinars and guidelines, reminding registrants of their all-in pricing obligations. The dates of said publications are attached hereto as Schedule “A”. Educational materials continue to be available on OMVIC’s website.

Prior OMVIC Inspections:

4. On or about January 17, 2013, a representative of the Registrar conducted an inspection of the Dealer’s premises. The Registrar’s representative reminded the Dealer about its all-in pricing obligations under section 36 of O. Reg. 333/08.

Direct Correspondence with Dealer:

5. On or about September 1, 2016, in response to a consumer complaint, a representative of the Registrar issued a caution letter to Lally, reminding him of the Dealer's all-in pricing obligations under section 36 of O. Reg. 333/08. The letter also required Lally to book an education seminar with OMVIC regarding all-in pricing regulations for all of its salespeople.
6. On or about October 25, 2016, Lally sent an e-mail to the Registrar's representative, confirming that the Dealer's salespeople have all attended the seminar.

Prior Discipline Committee Orders

7. On or about June 8, 2022, an OMVIC Representative made inquiries about a vehicle at the Dealer's premises, while posing as a member of the public (also known as a mystery shop). The OMVIC Representative found non-compliance with section 36(7) of O. Reg. 333/08.
8. On or about October 18, 2023, the Discipline Committee found that the Dealer, Lally, and another salesperson contravened the Code of Ethics. In particular, there was one advertisement published by the Dealer which failed to comply with all-in pricing obligations pursuant to section 36(7) of O. Reg. 333/08. The Dealer was ordered to pay a fine in the amount of \$2,500 and to offer all current and future sales staff the opportunity to complete the Automotive Certification Course. Lally and the salesperson were ordered to successfully complete the MVDA Key Elements Course.
9. On or about June 8, 2022, an OMVIC Representative made inquiries about a vehicle at the premises of 1741177 Ontario Inc. o/a Chatham Mazda ("Chatham Mazda"), while posing as a member of the public. Lally was registered as a Person in Charge of the day-to-day activities of Chatham Mazda at the time. The OMVIC Representative found non-compliance with section 36(7) of O. Reg. 333/08.
10. On or about January 25, 2024, the Discipline Committee found that Chatham Mazda, Lally, and another salesperson contravened the Code of Ethics. In particular, there was one advertisement published by Chatham Mazda which failed to comply with all-in pricing obligations pursuant to section 36(7) of O. Reg. 333/08. Chatham Mazda was ordered to pay a fine in the amount of \$2,500 and to offer all current and future sales staff the opportunity to complete the Automotive Certification Course. Lally and the salesperson were ordered to successfully complete the MVDA Key Elements Course.

Dealer's Non-Compliance:

11. On or before October 9, 2023, the Dealer published an advertisement for a blue 2021 Kia Forte EX, stock# K4840 (VIN# *392974) with an advertised price of \$26,498 plus taxes and licensing.
12. However, the advertisement failed to indicate that the vehicle was a former daily rental. As such, the Dealer contravened section 36(5) of O. Reg. 333/08, as well as sections 4(2) and 9(3) of the Code of Ethics.

13. On or about October 11, 2023, an OMVIC Representative made inquiries about the blue 2021 Kia Forte EX referred above, while posing as a member of the public.
14. A salesperson, acting on behalf of the Dealer, provided the OMVIC Representative with a worksheet for the vehicle. The worksheet indicated a selling price of \$25,998, which was \$500 lower than the advertised price. The following additional charges, however, were added to the price of the vehicle:
 - a. "On Roads" fee of \$499
 - b. OMVIC fee of \$10
 - c. Gas fee of \$50
15. The total selling price of the vehicle was therefore \$26,557, which was \$59 higher than the advertised price of \$26,498. As such, the Dealer's advertised vehicle price was not all-inclusive. This is contrary to section 36(7) of O. Reg. 333/08, as well as sections 4(2) and 9(3) of the Code of Ethics.

Lally's Non-Compliance:

16. Lally failed to ensure that the Dealer conducted its business in compliance with the Act, its regulations, and the Code of Ethics and thus personally contravened sections 6(2) and 9(3) of the Code of Ethics.
17. As particularized above, the Dealer has violated the following section of the Code of Ethics:

Disclosure and marketing

s. 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.

18. As particularized above, the Dealer and Lally have violated the following section of the Code of Ethics:

Professionalism

s. 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.

19. As particularized above, Lally has violated the following section of the Code of Ethics:

Accountability

s. 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.

Decision of the Reviewing Panel

Having reviewed and considered the Agreed Statement of Facts and written submissions provided by the Parties, the Reviewing Panel is satisfied that the evidence contained in the Agreed Statement of Facts substantiates the allegations that: (1) the Dealer has breached

subsections 4(2) and 9(3) of the OMVIC Code of Ethics; (2) Lally has breached subsections 6(2) and 9(3) of the OMVIC Code of Ethics.

The Reviewing Panel accepted the parties' proposed resolution for the reasons below.

Reasons for Decision

The Reviewing Panel received and considered comprehensive written materials from the parties and was left satisfied that the proposed resolution has no risk of being contrary to the public interest. The outcome is clearly connected to the admitted breaches of the Code of Ethics and consistent with other outcomes ordered in this Tribunal in similar cases. In such circumstances, disposition under Rule 1.07 is appropriate and ordered accordingly.

Dated: December 10, 2024

Ontario Motor Vehicle Industry Council
Discipline Tribunal

S. Darvish

Sherry Darvish, Discipline Tribunal Chair,
Public member
On behalf of:

Joe Wade, Registrant
Jon Lemaire, Registrant

