

APPEALS DECISION

IN THE MATTER OF AN APPEAL HEARING HELD PURSUANT TO THE MOTOR
VEHICLE DEALERS ACT 2002, S.O. 2002, C.30, Sch. B

BETWEEN:

LUXE INC. o/a CURVE MOTORS, AMIR HOSSEINI AND HAMID HOSSEINI
("Registrants")

- AND -

REGISTRAR, *MOTOR VEHICLE DEALERS ACT, 2002*
("OMVIC")

Date of Hearing: March 23, 2015

Date of Decision: April 17, 2015

Order:

1. The findings of the Discipline Committee of violations of the Code of Ethics with respect to non-disclosure of vehicles as "unfit", as alleged in paragraphs 10, 11, 12, and 13 of the Notice of Complaint, are overturned.
2. The findings of the Discipline Committee of violations of the Code of Ethics with respect to non-disclosure of prior daily rental use, as alleged in paragraphs, 10, 11 and 12 of the Notice of Complaint, are affirmed.
3. The order of the Discipline Committee dated November 24, 2013 is modified, as follows:
 - a. A fine in the amount of \$8,000, jointly and severally payable by Luxe Inc. o/a Curve Motors (the "Dealer"), Amir Hosseini ("Amir"), and Hamid Hosseini ("Hamid") within a period of 120 days from the date of the Discipline Committee Order.
 - b. Amir and Hamid will complete the OMVIC certification course in person, within 120 days of the date of the Discipline Committee Order. The Dealer will incur all costs associated with this.
 - c. The Dealer will offer all current and future sales staff the opportunity to complete the course. Current sales staff will be offered the course within 90 days of acceptance of this offer. 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. 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.
 - d. All advertisements published by or on behalf of the Dealer will comply with the *Motor Vehicle Dealers Act, 2002*, the Code of Ethics, and the Standards of Business Practice, as may be amended from time to time, including the clear and prominent disclosure of all vehicle history and the vehicle's total price.



Reasons for Decision

Introduction

This matter proceeded before a Panel of the Appeals Committee pursuant to Section 17 of the Motor Vehicle Dealers Act 2002.

OMVIC was represented by Elizabeth Maishlish, with Andrea Korth in attendance. The registrants were represented by Anik Morrow, and were not present for the appeal hearing. The Panel consisted of Wennie Lee (Chair), Bruce Wilson (Vice-Chair), and Glen Fenwick (Vice-Chair). Aaron Dantowitz attended as Independent Legal Counsel to the Panel.

The panel entered the following as exhibits:

Exhibit #1 was the Notice of Appeal, dated December 5, 2013;

Exhibit #2 was an Agreed Statement of Facts; and

Exhibit #3 was a Joint Submission on Penalty.

The panel also received and reviewed a number of items of documentary material from all parties in advance of the hearing.

The panel was advised that the parties had agreed on a proposal to resolve the appeal, as described below.

Facts:

The panel was presented with an Agreed Statement of Facts (Exhibit #2). Essentially, the parties agreed that certain findings of the Discipline Committee should be affirmed, and others overturned. Specifically, the effect of the Agreed Statement of Facts was that the Discipline Committee's findings with respect to the allegations of "unfit" non-disclosure, set out in paragraphs 10, 11, 12, 13 of the Notice of Complaint would be overturned, and the findings with respect to the allegations of prior daily rental non-disclosure would be affirmed. The Agreed Statement of Facts read as follows:

AGREED STATEMENT OF FACTS

Luxe Inc. o/a Curve Motors, Amir Hosseini and Hamid Hosseini have breached the following:

Section 4 of the Code of Ethics, Regulation 332/08

Section 9 of the Code of Ethics, Regulation 332/08

SUMMARY OF FACTS

The parties to this proceeding agree that:

1. Luxe Inc. o/a Curve Motors (the "Dealer") was first registered as a motor vehicle dealer in or around January 2012. Amir Hosseini ("Amir") was first registered as a motor vehicle salesperson in or around August 2005. At all material times, Amir



was an officer and director of Curve LTD. o/a Curve Motor Sport. Hamid Hosseini ("Hamid") was first registered as a motor vehicle salesperson in or around January 2011. At all material times Amir and Hamid have been officers and directors of the Dealer.

2. In or around December 2008, OMVIC issued a bulletin advising dealers of future advertising changes under the Motor Vehicle Dealers Act, 2002. Included in the bulletin was the requirement to disclose former daily rentals in advertisements.
3. In or around January 20, 2012 the Dealer executed terms and conditions of registration. As per condition 6, the Dealer agreed to comply with the Act and the Code of Ethics
4. During an inspection on or about March 9, 2012, a representative of the Registrar reviewed the January 20, 2012 terms and conditions with the Dealer.
5. On or before December 19, 2012 the Dealer advertised a 2012 Volkswagen Golf (VIN WVVDA7AJ6CW076712) without disclosing the vehicle's prior daily rental use, contrary to section 36(5) of Regulation 333/08 as well as section 4 and 9 of the Code of Ethics.
6. On or before December 19, 2012 the Dealer advertised a 2012 Volkswagen Golf (VIN WVVDA7AJ4CW091449) without disclosing the vehicle's prior daily rental use, contrary to section 36(5) of Regulation 333/08 as well as section 4 and 9 of the Code of Ethics.
7. On or before December 19, 2012 the Dealer advertised a 2012 Volkswagen Jetta (VIN 3VWDX7AJ0CM335643) without disclosing the vehicle's prior daily rental use, contrary to section 36(5) of Regulation 333/08 as well as section 4 and 9 of the Code of Ethics.

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.

(5) If any of the following is true of a motor vehicle, an advertisement that attempts to induce a trade in the specific vehicle shall indicate, in a clear, comprehensible and prominent manner, that the vehicle was previously,

- (a) Leased on a daily basis, unless the vehicle was subsequently owned by a person who was not a registered motor vehicle dealer.



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

4. 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.

Decision of the Panel:

After reviewing the Agreed Statement of Facts, the panel accepted it and ruled as follows:

1. The findings of the Discipline Committee of violations of the Code of Ethics with respect to non-disclosure of vehicles as "unfit", as alleged in paragraphs 10, 11, 12, and 13 of the Notice of Complaint, are overturned.
2. The findings of the Discipline Committee of violations of the Code of Ethics with respect to non-disclosure of prior daily rental use, as alleged in paragraphs, 10, 11 and 12 of the Notice of Complaint, are affirmed.

Reasons for Decision:

The Panel accepted the Agreed Statement of Facts presented by the parties. The Panel is satisfied that the Agreed Statement of Facts as they appear in Exhibit 2 represent a breach of Section 4 and Section 9 of the Code of Ethics, Regulation 332/08, in that the registrants failed to comply with the advertising requirements of the regulations set out in section 36 of the *Motor Vehicle Dealers Act, 2002*. The Panel is also satisfied that the findings with respect to non-disclosure of vehicles as "unfit" should be overturned, as both parties acknowledged there were arguable issues and consented to have the findings of the Discipline Committee overturned.

Submissions on Penalty

The panel was presented with a Joint Submission on Penalty (Exhibit #3), which read as follows:

JOINT SUBMISSION ON PENALTY:

1. A fine in the amount of \$8,000, jointly and severally payable by the Dealer, Amir, and Hamid within a period of 120 days from the date of the Discipline Committee Order.
2. Amir and Hamid agree that they will complete the OMVIC certification course in person, within 120 days of the date of the Discipline Committee Order. The Dealer will incur all costs associated with this.
3. 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 within 90 days



of acceptance of this offer. 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 or who are otherwise required to do so pursuant to the Act.

4. The Dealer agrees that all advertisements published by or on behalf of the Dealer will comply with the *Motor Vehicle Dealers Act, 2002*, the Code of Ethics, and the Standards of Business Practice, as may be amended from time to time, including the clear and prominent disclosure of all vehicle history and the vehicle's total price.

Decision on Penalty

After reviewing the Joint Submission, the panel accepted the joint submission and agreed to make an order modifying the order of the Discipline Committee, so that the terms of the order would now be the terms of the joint submission.

Reasons for Penalty:

Pursuant to Section 17 of the Motor Vehicle Dealers Act, 2002:

Powers of the appeals committee

(6) The appeals committee may by order overturn, affirm or modify the order of the discipline committee and may make an order under subsection (4). 2002, c.30, Sched., B, s.17(b)

In accordance to subsection 17(6) of the MVDA, 2002, the Panel accepted the Joint Submission on Penalty by the parties, as on the whole, taking into account all the elements of the joint submission, the complexity of this case, and in light of the revised Agreed Statement of Facts, the agreed penalty is within the appropriate range of penalties. There is no reason to depart from the joint penalty submission made by the parties' counsel, both of whom are competent counsels, who arrived at a recommendation on penalty that in the Panel's view is adequate. The Panel believes that accepting the joint submission encourages settlement between the parties, saving considerable time and expense of a hearing, and for the parties a reasonable certainty of outcome. For all of these reasons, the Panel accepts the joint submission on penalty and thank both counsels for their assistance.

Ontario Motor Vehicle Industry Council
Appeals Panel



Wennie Lee, *Chair*
Bruce Wilson, *Vice Chair*
Glen Fenwick, *Vice Chair*

