

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

BETWEEN:

REGISTRAR, *MOTOR VEHICLE DEALERS ACT, 2002*

- AND -

J.J. STEWART MOTORS LIMITED

- AND -

JOHN STEWART

- AND -

DAVID STEWART

- AND -

MARK STEWART

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: November 4, 2014

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. John is ordered to successfully complete the OMVIC certification course (the "course") within 90 days of the date of the Discipline Committee Order.
3. The Dealer is ordered 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 the

date of the Discipline Committee Order. Future sales staff will be offered the course within 90 of being retained in this capacity. 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, John, Mark, and David shall 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. J.J. Stewart Motors Limited (the "Dealer") was first registered as a motor vehicle dealer in or around February 1983. John Stewart ("John") was first registered as a motor vehicle salesperson around April 1983. David Stewart ("David") was first registered as a motor vehicle salesperson in or around November 1998. Mark Stewart ("Mark") was first registered as a motor vehicle salesperson in or around November 1999. At all material times, John, David, and Mark were officers and directors of the Dealer.
2. In the winter of 2008, OMVIC issued a Dealer Standard publication which outlined many of the requirements of the upcoming *Motor Vehicle Dealers Act, 2002*, (the "Act"), including dealers' obligation to provide purchasers with written disclosure on the bill of sale of vehicle's former daily rental history.
3. In or around January 2010, OMVIC issued a bulletin reminding dealers of their obligation to provide purchasers with written disclosure on the bill of sale of vehicle's former daily rental history.
4. In the summer of 2011, OMVIC issued a Dealer Standard publication reminding dealers of their obligation to provide purchasers with written disclosure on the bill of sale of vehicle's former daily rental history.
5. In the summer of 2012, OMVIC issued a Dealer Standard publication reminding dealers of their obligation to provide purchasers with written disclosure on the bill of sale of vehicle's former daily rental history.

6. In or around September 2012, OMVIC issued a bulletin reminding dealers of their obligation to provide purchasers with written disclosure on the bill of sale of vehicle's former daily rental history.
7. On or about August 20, 2013, David, on behalf of the Dealer, purchased a 2013 Dodge Dart (VIN 1C3CDFBA1DD225850), declared as a former daily rental unit. On or about August 22, 2013, David, on behalf of the Dealer, sold this vehicle without providing the purchaser with written disclosure of the vehicle's former daily history. This is contrary to section 42(7) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. The Dealer has since provided OMVIC with confirmation from the purchaser that they were aware of their vehicle history at the time of purchase.
8. On or before January 22, 2014, the Dealer, purchased a 2013 Dodge Avenger (VIN 1C3CDZCB8DN555892). On that same date, David, on behalf of the Dealer, sold this vehicle providing the purchaser with written disclosure of the vehicle's former daily history. This is contrary to section 42(7) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. The Dealer has since provided OMVIC with confirmation from the purchaser that they were aware of their vehicle history at the time of purchase.

By failing to comply with the following sections of the *Motor Vehicle Dealers Act, 2002* (the "Act"):

Regulation 333/08:

42. Additional information in contracts of sale and leases

7. If any of the following is true of the motor vehicle, a statement to the 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.

It is thereby agreed that the Dealer, John, David, and Mark 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 a 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. John agrees to successfully complete the OMVIC certification course (the "course") within 90 days of the date of the Discipline Committee Order.
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 the date of the Discipline Committee Order. Future sales staff will be offered the course within 90 of being retained in this capacity. 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, John, Mark, and David 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, John, Mark and David 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. John is ordered to successfully complete the OMVIC certification course (the "course") within 90 days of the date of the Discipline Committee Order.
3. The Dealer is ordered 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 the date of the Discipline Committee Order. Future sales staff will be offered the course within 90 of being retained in this capacity. 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, John, Mark, and David shall comply with the Act and Standards of Business Practice, as may be amended from time to time.

Ontario Motor Vehicle Industry Council
Discipline Committee



Catherine Poultney, Chair