

## 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 -

CHRISTON MOTORS INC.

- AND -

ANTHONY SMOUROV

---

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 20, 2014

**Findings:** Breach of Sections 4, 7 and 9 of the Code of Ethics

**Order:**

1. The Dealer is ordered to pay a fine in the amount of \$4,500. \$500 of this fine is due within 30 days of the date of the Discipline Committee Order. The remaining \$4,000 is due within 150 days of the date of the Discipline Committee Order.
2. Smourov is ordered to successfully complete the OMVIC certification course ("course"), within 120 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. Christon Motor Inc. (the "Dealer") was first registered as a motor vehicle dealer in or around January 2006. Anthony Smourov ("Smourov") was first registered as motor vehicle salesperson in or around May 2002. At all material times, Smourov was the sole officer and director of the Dealer.
2. On or about January 13, 2006, Smourov executed terms and conditions on behalf of the Dealer. As per condition 6, the Dealer agreed to comply with the Code of Ethics and Standards of Business Practice, as may be amended from time to time. As per condition 20, the Dealer agreed it is under a positive obligation to provide purchasers with written disclosure of all material facts about the vehicles it sells, including but not limited to, accident and repaired vehicles.
3. During an inspection on or about February 21, 2006, a representative of the Registrar offered to review with Smourov on behalf of the Dealer, the Dealer's obligations with respect to their terms and conditions as well as OMVIC's Standards of Business Practice. Smourov refused this offer and indicated that he understood the Dealer's obligations.
4. In the winter of 2008, OMVIC issued a Dealer Standard publication 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 a vehicle's accident repair history.
5. In or around December 2008, OMVIC issued a bulletin which highlighted some of the upcoming disclosure requirements that would take place when the Act came into effect. This included but was not limited to, accident repair history.
6. In or around January 2010, OMVIC issued a bulletin reminding dealers of their obligations when advertising "As Is" vehicles.
7. In or around January 2010, OMVIC issued a bulletin reminding dealers to provide purchasers with written disclosure of a vehicle's accident repair history.

8. In or around April 2010, OMVIC issued a bulletin reminding dealers of their obligations when advertising "As Is" and "Unfit" vehicles.
9. In the summer of 2011, OMVIC issued a Dealer Standard publication which reminded dealers of their obligations to provide purchasers with written disclosure of a vehicle's accident repair history.
10. In or around June 2011, OMVIC issued a bulletin reminding dealers of their obligations when advertising "As Is" and "Unfit" vehicles.
11. During an inspection on or about June 8, 2011, a representative of the Registrar met with Smourov. The inspection revealed:
  - a) The Dealer was failing to obtain the required information about trade-in vehicles
  - b) The Dealer was not properly disclosing material facts about the vehicles
  - c) The Dealer was failing to keep proper books and records
  - d) The Dealer was failing to properly advertise vehicles

At this time the Dealer was advised of his obligation with respect to the above.

12. In or around February 2012, OMVIC issued a bulletin reminding dealers of their obligations when advertising "As Is" and "Unfit" vehicles.
13. In or around September 2012, OMVIC issued a bulletin which reminded dealers of their obligations to ensure that former daily rental vehicles are disclosed in writing on the contract and in advertising. In addition to this, dealers were reminded of their obligation to disclose in writing all material facts about a vehicle that may influence a purchaser's decision.
14. Between on or about June 26, 2013 and August 29, 2013, the Dealer sold vehicles "As Is" and failed to have the purchasers initial the "As Is" statement. In addition to this, the Dealer took the purchasers' vehicles in on trade and failed to obtain required information about the vehicles. This is contrary to sections 40(2)5 and 43(2) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics.
15. On or before July 5, 2013, the Dealer purchased a 2003 Mercedes C230 (VIN WDBRN40J93A446556). This vehicle was accident repaired. On or about July 5, 2013, the Dealer sold this vehicle without providing the purchaser with written disclosure of the vehicles \$4,409 accident repair history. The Dealer also sold this vehicle "As Is" and failed to have the purchaser to initial the "As Is" statement. Furthermore, the Dealer took the purchaser's 2003 Honda Civic (VIN 2HGES15413H913711) in on trade and failed to obtain required information about this vehicle. This is contrary to sections 40(2)5, 42(19), and 43(2) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. The Dealer has subsequently contacted the purchaser in writing and advised them of the vehicle's accident repair history.
16. On or about August 15, 2013, the Dealer purchased a 2002 GMC Sierra (VIN 2GTEK19T921131874). This vehicle was accident repaired. On or about August 19, 2013, the Dealer sold this vehicle without providing the purchaser with written disclosure

of the vehicles \$4,727 accident repair history. This is contrary to section 42(19) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. The Dealer has subsequently contacted the purchaser in writing and advised them of the vehicle's accident repair history.

17. Between on or about August 24, 2013 and September 4, 2013, advertisements were placed by or on behalf of the Dealer. These advertisements did not include the required "As Is" disclosure statement. This is contrary to sections 4 and 9 of the Code of Ethics.

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

### Disclosure

40. Contract for sales of used motor vehicles.

(2) 5. If the Dealer is selling the vehicle on an "as-is" basis, a statement in accordance with subsection (6) in 12 point bold font, except for the heading which shall be in 14 point bold font, where the purchaser initials the statement.

(6) The statement mentioned in paragraph 5 of subsection (2) is as follows:

#### **Vehicle sold "as-is"**

The motor vehicle sold under this contract is being sold "as-is" and is not represented as being in road worthy condition, mechanically sound or maintained at any guaranteed level of quality. The vehicle may not be fit for use as a means of transportation and may require substantial repairs at the purchaser's expense. It may not be possible to register the vehicle to be driven in its current condition.

42. Additional information in contracts of sale and leases.

(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.

43. Additional contract requirements for trade-ins

(2) If the selling or leasing dealer described in clause (1)(a) receives a motor vehicle being traded in, the dealer shall ensure that the sale or lease contract includes, in a clear, comprehensible and prominent manner, the information set out in subsection (4) with respect to the vehicle being traded in.

It is thereby agreed that the Dealer and Smourov 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.
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 \$4,500. \$500 of this fine is due within 30 days of the date of the Discipline Committee Order. The remaining \$4,000 is due within 150 days of the date of the Discipline Committee Order.
2. Smourov agrees to successfully complete the OMVIC certification course ("course"), within 120 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 Smourov breached subsections 4, 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 \$4,500. \$500 of this fine is due within 30 days of the date of the Discipline Committee Order. The remaining \$4,000 is due within 150 days of the date of the Discipline Committee Order.

2. Smourov is ordered to successfully complete the OMVIC certification course ("course"), within 120 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

A handwritten signature in black ink, appearing to read "C. Poultney", is written above a horizontal line.

*Catherine Poultney, Chair*