

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 -

ASTRA MOTORS INC.

- AND -

PAUL JADWIDZIC

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: May 19, 2017

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 \$1,000 within 90 days of the date of the Discipline Committee Order.
2. Jadwidzic is ordered to attend and successfully complete the OMVIC certification course (the "course") within 180 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 180 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 after January 1st, 2009, or who are otherwise required to do so pursuant to the Act.
4. The Dealer 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. 2228175 Ontario Inc. Astra Motors Inc. (the "Dealer") was first registered as a motor vehicle dealer in or around December 2000. Paul Jadwidzic ("Jadwidzic") was first registered as motor vehicle salesperson in or around October 1997. At all material times, Jadwidzic was the director of the Dealer.

Direct correspondence with the Dealer:

2. During an inspection on or about March 7, 2014, a representative of the Registrar reminded the Dealer of their obligation to disclose all damage amounts and material facts and not to just report "damage over \$3,000".
3. In an email dated April 9, 2014, OMVIC's Director of Compliance responded to an email from the Dealer's counsel. In said email, the Director of Compliance referred counsel to OMVIC's bulletin dated December 2013, which set out OMVIC's position on accident disclosures.
4. During an inspection on or about October 29, 2015 a representative of the Registrar reminded the Dealer of their obligation to disclose all material facts in accordance with regulation 42 of the *Motor Vehicle Dealers Act*.
5. In a letter dated February 18, 2016, a representative of the Registrar again reminded the Dealer of their obligation to ensure consumers receive disclosure of material facts that may influence their decision, including fulsome information about previous accidents.

Dealer non-compliance:

6. On or before April 15, 2016, the Dealer placed an online advertisement for a 2012 BMW 3-Series (Kijiji Ad ID # 1156005050). This vehicle was an insurance write off and had an estimate repair total loss of \$16,532. While posing as a member of the public, a representative of the Registrar shopped the dealer via email, enquiring as to whether the vehicle had any damage. The Dealer advised the same representative that the vehicle was in "tip top shape". When a follow up email was sent by the same representative to the Dealer asking for further information regarding an accident history, the Dealer advised that the "rear bumper was replaced approx. \$3,000 damage". As such, the Dealer's representation of the vehicle was misleading and contrary to section 28 of the Act, as well as section 4 and 9 of the Code of Ethics.



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

False Advertising

28. No registrant shall make false, misleading or deceptive statements in any advertisement, circular, pamphlet or material published by any means relating to trading in more vehicles.

It is thereby agreed that the Dealer and Jadwidzic 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.

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 \$1,000 within 90 days of the date of the Discipline Committee Order.
2. Jadwidzic agrees to attend and successfully complete the OMVIC certification course (the "course") within 180 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 180 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 after January 1st, 2009, or who are otherwise required to do so pursuant to the Act.
4. The Dealer agrees to comply with the Act and Standards of Business Practice, as may be amended from time to time.

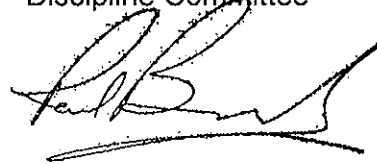


Decision of the Chair

Having reviewed and considered the Agreed Statement of Facts, the Chair of the Discipline Committee hereby concludes that the Dealer and Jadwidzic 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 \$1,000 within 90 days of the date of the Discipline Committee Order.
2. Jadwidzic is ordered to attend and successfully complete the OMVIC certification course (the "course") within 180 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 180 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 after January 1st, 2009, or who are otherwise required to do so pursuant to the Act.
4. The Dealer 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



Paul Burroughs, Chair

