

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 -

1514831 ONTARIO LIMITED o/a PATHWAY HYUNDAI

- AND -

GREGORY A. STEWART

- AND -

ANDREW K. MCGURN

- AND -

MICHAEL P. MCGURN

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: March 31, 2015

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 \$6,000 within 90 days of the date of the Discipline Committee Order.
2. Stewart is ordered to 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 120 days of acceptance of this offer. Future sales staff will be offered the course within 120 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. 1514831 Ontario Limited o/a Pathway Hyundai (the "Dealer") was first registered as a motor vehicle dealer on or about August 2002. Gregory A. Stewart ("Stewart") was first registered as a motor vehicle salesperson on or about October 1983. Andrew K. McGurn ("A. McGurn") was first registered as a motor vehicle salesperson on or about August 1992. Michael P. McGurn ("M. McGurn") was first registered as a motor vehicle salesperson on or about July 1994. At all material times Stewart, A. McGurn, and M. McGurn were officers and directors of the Dealer.
2. Dane Fellows ("Fellows") was first registered as a motor vehicle salesperson in or around June 2000. Fellows failed to renew his registration as a salesperson and was terminated in or around June 2010. On or about July 28, 2014, Fellows became registered under the Act as a motor vehicle salesperson.
3. Devon Anderson ("Anderson") was first registered as a motor vehicle salesperson on or about October 2, 2014.
4. During an inspection on or about October 8, 2008, a representative of the Registrar reminded the dealer of their obligation to provide purchasers with written disclosure of a vehicle's daily rental history.
5. During an inspection on or about July 8, 2014, a representative of the Registrar found the following concerns.

Non-Disclosure of Daily Rentals

6. On or about November 18, 2013, the Dealer purchased a 2013 Hyundai Elantra (VIN: KMHD25LE9DU041172), declared as a former daily rental. On or about January 9,



2014, the Dealer sold this vehicle without providing the purchaser with written disclosure of the vehicle's daily rental 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 subsequently informed the purchaser of the vehicle's daily rental history.

7. On or about April 7, 2014, the Dealer purchased a 2014 Dodge Caravan (VIN: 2C4RDGDG2ER205022), declared as a former daily rental. On or about June 5, 2014, the Dealer sold this vehicle without providing the purchaser with written disclosure of the vehicle's daily rental 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 subsequently informed the purchaser of the vehicle's daily rental history.
8. After the inspection of July 8, 2014, the Dealer self-audited its books and records. Purchasers of additional daily rental vehicles which were not disclosed in writing were informed of their vehicle histories.

Unregistered Salespersons

9. From on or about June 2010 to on or about July 2014, Fellows worked at the Dealer as a motor vehicle salesperson without the benefit of registration. As such, the Dealer retained the services of an unregistered salesperson. This is contrary to section 4 of the Act, as well as section 9 of the Code of Ethics.
10. From on or about April 2014 to on or about October 2014, Anderson worked at the Dealer as motor vehicle salesperson without the benefit of registration. As such, the Dealer retained the services of an unregistered salesperson. This is contrary to section 4 of the Act, as well as section 9 of the Code of Ethics.
11. After the inspection of July 8, 2014, the Dealer instituted a process to ensure that in the future, no other individual would work at the Dealer as a motor vehicle salesperson without the benefit of registration.

By failing to comply with section 4 of the *Motor Vehicle Dealers Act, 2002*:

Unregistered Salesperson

4(3) . A motor vehicle dealer shall not retain the services of a salesperson unless the salesperson is registered in that capacity. 2002, c. 30, Sched. B, s. 4(3).

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

Disclosure

42(7) If any of the following is true of the motor vehicle, a statement to that 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 and Stewart and A. McGurn and M. McGurn 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 is ordered to pay a fine in the amount of \$6,000 within 90 days of the date of the Discipline Committee Order.
2. Stewart is ordered to 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 120 days of acceptance of this offer. Future sales staff will be offered the course within 120 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.

Decision of the Chair

Having reviewed and considered the Agreed Statement of Facts, the Chair of the Discipline Committee hereby concludes that the Dealer, Stewart, A. McGurn, M. McGurn 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 \$6,000 within 90 days of the date of the Discipline Committee Order.
2. Stewart is ordered to 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 120 days of acceptance of this offer. Future sales staff will be offered the course within 120 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



Catherine Poultney, Chair

