

DISCIPLINE DECISION

REVIEWING PANEL: Deb Mattina, Public Member
Joe Wade, Discipline Tribunal Chair, Registrant
Chris Pinelli, Registrant

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 :

ONTARIO MOTOR VEHICLE)
INDUSTRY COUNCIL)
- and -)
SEVEN VIEW PLYMOUTH CHRYSLER)
LIMITED)
- and -)
MICHAEL MAGARELLI)
- and -)
HOMER ZEHTABI)
)

This matter proceeded by way of Rule 1.07 of the Rules of Practice before the Discipline Tribunal and the Appeals Tribunal. This Reviewing Panel has reviewed and considered written materials from the Parties together with a waiver of the requirement for an oral hearing and hereby makes the following Order:

Date of Decision: July 24, 2024

Findings: **Seven View Plymouth Chrysler Limited (the “Dealer”) has breached the following:**

- Sections 4(2) and 9(3) of the Code of Ethics, O. Reg. 332/08

Michael Magarelli (“Magarelli”) has breached the following:

- Sections 6(2) and 9(3) of the Code of Ethics, O. Reg. 332/08

Homer Zehtabi (“Zehtabi”) has breached the following:

- Sections 4(2), 6(2) and 9(3) of the Code of Ethics, O. Reg. 332/08

Order:

1. Seven View Plymouth Chrysler Limited (the “Dealer”) shall pay a fine in the amount of **\$3,000** no later than ninety (90) calendar days from August 28, 2024.
2. Michael Magarelli (“Magarelli”) shall successfully complete the MVDA Key Elements Course no later than ninety (90) calendar days from August 28, 2024.
3. Homer Zehtabi (“Zehtabi”) shall successfully complete the MVDA Key Elements Course no later than ninety (90) calendar days from August 28, 2024.
4. The Dealer shall **offer** to all current and future salespersons, employed by the Dealer, to **fund** their completion of the Automotive Certification Course, no later than ninety (90) calendar days from August 28, 2024.
5. The Dealer, Magarelli and Zehtabi shall comply with the *Motor Vehicle Dealers Act, 2002*, O. Reg. 333/08, O. Reg. 332/08 and its Code of Ethics, and the Standards of Business Practice.

Overview

This matter proceeded on the basis of an Agreed Statement of Facts, dated June 26, 2024, a Joint Submission on Penalty and a waiver of oral hearing, pursuant to Rule 1.07 of the Rules of Practice before the Discipline Tribunal and the Appeals Tribunal. The Agreed Statement of Facts states in relevant part as follows:

Background:

1. Seven View Plymouth Chrysler Limited (the “Dealer”) was first registered as a motor vehicle dealer under the Act in and around June 1982.
2. Michael Magarelli (“Magarelli”) was first registered as a salesperson under the Act in and around October 1999. At all material times, Magarelli has been the Person in Charge of the day-to-day activities of the Dealer.
3. Homer Zehtabi (“Zehtabi”) was first registered as a salesperson under the Act in and around August 2010. At all material times, Zehtabi has been the Fleet Manager of the Dealer.

OMVIC Publications

4. Since the Act was proclaimed in 2010, OMVIC has issued various educational materials, including publications, webinars and guidelines, reminding registrants of their all-in pricing obligations. The dates of said publications are attached hereto as Schedule "A". Educational materials continue to be available on OMVIC's website.

Direct Correspondence with Dealer

5. On or about March 3, 2015, a representative of the Registrar reminded the Dealer of its obligation to advertise all-inclusive prices pursuant to Section 36 of O. Reg. 333/08.
6. On or about November 6, 2015, a representative of the Registrar reminded the Dealer of its obligation to advertise all-inclusive prices pursuant to Section 36 of O. Reg. 333/08.

Dealer's Non-Compliance:

7. On or before March 21, 2024, the Dealer published an advertisement for a blue 2022 Jeep Cherokee Trailhawk, stock #7752 (VIN# ***525620) with an advertised final price of \$42,277 plus taxes, "fees and adds".
8. On or about March 21, 2024, a representative of OMVIC (the "Representative") attended the Dealer's premises to make inquiries about the vehicle, while posing as a member of the public (also known as a 'mystery shop').
9. Zehtabi provided the Representative with a worksheet which showed an additional "miscellaneous" fee of \$509.99.
10. Zehtabi also advised the Representative that the Miscellaneous fees comprised of a \$499 administrative fee and a \$10 OMVIC fee.
11. As a result, the Dealer's advertised vehicle price was not all-inclusive. This is contrary to section 36(7) of O. Reg. 333/08, as well as sections 4(2) and 9(3) of the Code of Ethics

Magarelli's Non-Compliance:

12. Magarelli, as the Person in Charge, failed to ensure that the Dealer conducted its business in compliance with the Act, its regulations, and the Code of Ethics and thus personally contravened sections 6(2) and 9(3) of the Code of Ethics.

Zehtabi's Non-Compliance:

13. In regard to the above-noted vehicle, Zehtabi engaged in the trade of the above-noted vehicle in a manner that is contrary to section 4(2) and 9(3) of the Code of Ethics and also caused the Dealer to contravene the Act, its regulations, and the Code of Ethics and thus personally contravened sections 6(2) and 9(3) of the Code of Ethics.
14. As particularized above, the Dealer and Zehtabi have violated the following section of the Code of Ethics:

Disclosure and marketing

s. 4(2) 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.

15. As particularized above, the Dealer, Magarelli and Zehtabi have violated the following section of the Code of Ethics:

Professionalism

s. 9(3) A registrant shall use the registrant's best efforts to prevent error, misrepresentation, fraud or any unethical practice in respect of a trade in a motor vehicle.

16. As particularized above, Magarelli and Zehtabi have violated the following section of the Code of Ethics:

Accountability

s. 6(2) A registered salesperson shall not do or omit to do anything that causes the registered motor vehicle dealer who employs or retains the salesperson to contravene this Regulation or any applicable law with respect to trading in motor vehicles.

Decision of the Reviewing Panel

Having reviewed and considered the Agreed Statement of Facts and written submissions provided by the Parties, the Reviewing Panel is satisfied that the evidence contained in the Agreed Statement of Facts substantiates the allegations that: (1) the Dealer has breached subsections 4(2) and 9(3) of the OMVIC Code of Ethics; (2) Magarelli has breached subsections 6(2) and 9(3); and (3) Zehtabi has breached subsections 4(2), 6(2) and 9(3) of the OMVIC Code of Ethics.

The Reviewing Panel accepted the Joint Submission on Penalty for the reasons that follow.

Reasons for Decision

The case is about a breach of all-in pricing requirements.

Michael Magarelli was first registered as a salesperson around October 1999. At all times he was the person in charge of the day-to-day operations at the Dealer. Homer Zehtabi was first registered as a salesperson around August 2010. There is no dispute among the parties that there have been dozens of publications, bulletins, webinars and guidelines published by OMVIC which address the exact types of breaches found out in this case.

On or before March 21, 2024, the Dealer published an advertisement for a blue 2022 Jeep Cherokee Trailhawk, stock #7752 with an advertised final price of \$42,277 plus taxes, "fees and adds".

As set out in the Agreed Statement of Facts, according to the Agreed Statement of Facts, on or about March 21, 2024, an OMVIC representative acting as a “mystery shopper” attended at the Dealer and made inquiries about the above vehicle while posing as a member of the public. Zehtabi provided the representative with a worksheet for the sale of the vehicle which showed an additional “miscellaneous fee” of \$509 which was explained as a \$499 administrative fee and a \$10 OMVIC fee. The total amount was added to the advertised price breaching the all-inclusive advertising requirements. This is contrary to the Code of Ethics.

On these facts, the Dealer, salesperson, and the Person-in-Charge are all in breach of the Code of Ethics.

A \$509 breach results in a \$3000 fine notwithstanding that no sale took place. This penalty should serve as a reminder to all registrants that an advertising breach is a breach regardless of whether or not the vehicle in question is sold or any harm comes to a member of the public.

Given the above, the order proposed in the Joint Submission is not contrary to the public interest. On the contrary, the order will deter this type of conduct and its educational terms will promote rehabilitation of the individual respondents and hopefully ensure that other Dealer staff do not engage in similar behaviour.

Ontario Motor Vehicle Industry Council
Discipline Tribunal

Dated: August 28, 2024

A handwritten signature in blue ink, appearing to read "Deb Mattina", is written over a horizontal line.

Deb Mattina, Public member
On behalf of:

Joe Wade, Discipline Tribunal Chair
Chris Pinelli, Registrant

