

DISCIPLINE DECISION

REVIEWING PANEL: Deb Mattina, Public Member
Joe Wade, Registrant
Wally Pietraszko, Registrant

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-

SYED HASSAN NAQVI o/a CLASSICS CAR DEAL

Pursuant to Rule 1.07 of the Rules of Practice before the Discipline Committee and the Appeals Committee, a Reviewing Panel has 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 17, 2024

Findings: Syed Hassan Naqvi o/a Classics Car Deal has breached the following:

Sections 7 and 9 of the Code of Ethics, O. Reg 332/08

Order:

1. Syed Hassan Naqvi o/a Classics Car Deal ("Naqvi") (the "Dealer") shall pay a fine in the amount of **\$3,000** no later than 120 calendar days from the date of the Discipline Committee's order.
2. Naqvi shall successfully complete the Automotive Certification Course no later than 120 calendar days from the date of the Discipline Committee's order.
3. Naqvi shall **offer** to all current and future salespersons to **fund** their completion of the Automotive Certification Course, no later than 120 calendar days from the date of the Discipline Committee's order.
4. Naqvi 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, as may be amended from time to time.

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.

Background:

1. Syed Hassan Naqvi ("Naqvi") was first registered as a motor vehicle salesperson in or around April 2016.
2. On or about February 24, 2021, Naqvi is registered as a motor vehicle dealer, operating as Classics Car Deal. Naqvi operates this business as a sole proprietorship.
3. On or about March 24, 2015, Naqvi successfully completed the Automotive Certification course (the "Course"). The following subjects are included in the Course syllabus:
 - a. Dealers' obligation to disclose all material facts about the vehicles they sell, including but not limited to any damage in excess of \$3,000 that a vehicle has sustained from an accident or incident.
 - b. Dealers' obligations to ensure they do not trade in motor vehicles with unregistered dealers ("curbsiders").
 - c. Trade-in disclosure statements.
4. On or about February 18, 2021, Naqvi executed terms and conditions of registration.
5. Per condition 1, Naqvi agreed to comply with the Code of Ethics and Standards of Business Practice, as may be amended from time to time.
6. Per condition 7, Naqvi agreed that he will not conduct business with "curbsiders", i.e. dealers who illegally trade in motor vehicles without benefit of registration under the Act.
7. Per condition 16, Naqvi agreed to not purchase a vehicle without first ensuring that the vehicle is registered to the seller, in the records of the Ministry of Transportation (MTO).
8. Per condition 21, Naqvi agreed to ensure that all of his trades in motor vehicles are completed in accordance with section 30 of the Act, and pursuant to sections 39-43 of O. Reg. 333/08.
9. Per condition 22, Naqvi agreed to disclose all material facts about the vehicles he sells and further agreed to research the histories of all vehicles he sells to ensure that all material facts are disclosed to the purchaser.

OMVIC publications re: material fact disclosure:

10. OMVIC has issued numerous publications and webinars reminding registrants of their disclosure obligations, including but not limited to, their obligation to disclose in writing on the bill of sale a vehicle's accident repair history. Educational materials continue to be available on OMVIC's website.

Direct correspondence with Dealer:

11. During an inspection on about July 9, 2021, Naqvi was reminded of his material fact disclosure obligations.

Dealer's non-compliance:

12. During an inspection on or about December 13, 2022, the following non-compliant vehicle trades were found:

2010 BMW 323i:

13. On or before October 19, 2022, Naqvi purchased a 2010 BMW 323i (VIN: WBAPG7C54AA641915). This vehicle had previously sustained damage in the amounts of \$3,492 and \$8,931 from two separate accidents or incidents. The vehicle also had known transmission problems requiring repair.

14. On or before October 19, 2022, Naqvi sold this vehicle to a consumer but failed to disclose either of the previous damage amounts, or that the vehicle required transmission repairs, in writing on the bill of sale. This was contrary to sections 42(13), 42(19), and 42(25) of O. Reg. 333/08, as well as sections 7 and 9 of the Code of Ethics. Naqvi has since provided confirmation that the consumer was aware of the vehicle's history at the time of purchase.

15. The bill of sale failed to indicate the date of sale, or the vehicle's distance travelled. This was contrary to sections 40(2) and 42(3) of O. Reg. 333/08, as well as sections 7 and 9 of the Code of Ethics.

2012 Kia Forte:

16. On or before September 28, 2022, Naqvi purchased a 2012 Kia Forte (VIN: KNAFU5A26C5619783). The seller of the vehicle, as indicated on the bill of sale, was not, nor has ever been, the registered owner of the vehicle. Failing to ensure that the seller was the registered owner of the vehicle was contrary to section 9 of the Code of Ethics.
17. During the inspection, Naqvi acknowledged that the seller of the vehicle was a vehicle repair shop that had acquired the vehicle from its customer. The repair shop is not a registered dealer under the Act and the Naqvi acknowledged assisting the repair shop to sell cars. This was contrary to condition 7 of Naqvi's terms and conditions of registration, as well as section 9 of the Code of Ethics.

18. This vehicle had sustained \$4,635 in accident damage. On or about September 28, 2022, Naqvi sold this vehicle to a consumer but failed to disclose the previous accident damage, in writing on the bill of sale. This was contrary to sections 42(19) and 42(25) of O. Reg. 333/08, as well as sections 7 and 9 of the Code of Ethics. Naqvi has since provided confirmation that the consumer was aware of the vehicle's history at the time of purchase.
19. Moreover, the bill of sale failed to indicate the vehicle's distance travelled. This is contrary to section 42(3) of O. Reg. 333/08, as well as sections 7 and 9 of the Code of Ethics.
20. Furthermore, the vehicle was not registered to Naqvi, and subsequently the consumer, until October 21, 2022, contrary to section 11(2) of the *Highway Traffic Act*. This is contrary to sections 7(2) and 9 of the Code of Ethics.

2010 Audi A5:

21. On or before April 30, 2022, Naqvi purchased a 2010 Audi A5 (VIN: WAUSFBFR6AA020397). The seller of the vehicle, as indicated on the bill of sale, was not, nor has ever been, the registered owner of the vehicle. Failing to ensure that the seller was the registered owner of the vehicle was contrary to section 9 of the Code of Ethics.
22. The vehicle required significant mechanical repairs including repairs to the engine.
23. The seller initially agreed to take the vehicle back when Naqvi discovered the engine problems. Eventually the seller refunded Naqvi \$1,000 for the undisclosed engine problems and Naqvi kept the vehicle. Naqvi advised the OMVIC inspector that his father, a licensed mechanic, had repaired some, but not all of the vehicle's mechanical and engine problems.
24. On or about August 31, 2022, Naqvi sold the vehicle to a consumer. The bill of sale failed to indicate the vehicle's distance travelled, or that the vehicle required engine repairs. This was contrary to sections 42(3) and 42(13) of O. Reg. 333/08, as well as sections 7 and 9 of the Code of Ethics. Naqvi has since attempted to contact the consumer, but has not received a response and thus unable to confirm what the consumer was aware of at the time of purchase.

Naqvi's violations of the Code of Ethics:

25. Naqvi failed to ensure that he conducted his business in compliance with his terms and conditions and the Regulations, and therefore violated sections 7 and 9 of the Code of Ethics.

It is hereby agreed that Naqvi breached the following sections of the Code of Ethics, as set out in O. Reg 332/08:

7. (1) *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.*
- (2) *A registered motor vehicle dealer who enters into a contract with a person for the sale of a motor vehicle shall facilitate compliance by the person with the person's*

obligations under subsection 11 (2) of the Highway Traffic Act unless the person instructs the dealer not to do so.

9. (1) *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.*

(2) *In carrying on business, a registrant shall act with honesty, integrity and fairness.*

(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.*

Decision of the Reviewing Panel

The Reviewing Panel having considered the submissions presented to them initially had decided unanimously to reject the Joint-Submission on Penalty as the Panel felt that the egregious nature and number of infractions of the Code of Ethics warranted a much more significant penalty. The Panel was absolutely cognizant of the threshold for rejecting a Joint Submission on Penalty, and the relevant case law, but felt that to accept this Joint submission would violate our obligation to protect the consumer.

By an ad hoc count the panel notes at least 10 infractions of the code. These infractions include nondisclosure of accident damage over \$3000 in writing on the bill of sale, no date of sale on the Bill of Sale, travel distances not recorded on the bill of sale, the seller not being the registered owner of the vehicle, assisting a repair shop that is not a registered dealer to sell vehicles, and not disclosing mechanical issues to the purchaser.

The Panel notes that with each of the three vehicles in question there are at least 3 breaches of the code of ethics and those breaches vary with each of the vehicles. To summarize, at least 10 breaches under 6 different sections of the Code.

Finally, the Panel observed that Syed Hassan Naqvi has been registered with OMVIC since April of 2016. The Panel noted that in February 2021 terms and conditions of registration were executed as set out in Paragraph 4 of the Background information of this document. All the above noted breaches were the subject of specific terms and conditions of registration.

In addition to the case law the Panel also reviewed prior OMVIC decisions to support the argument of the sufficiency of the agreed upon penalty. While the Panel acknowledges they must be guided by the decisions of the court, there is no such obligation to follow the decisions of other discipline panel orders. While those orders often help to guide negotiations or indeed inform the imposition of penalties following a hearing, there is no mandate to accept them. In this case the Parties submit that in keeping with the discipline cases referenced in this matter a penalty of \$1000 per vehicle sold is appropriate. The Panel respectfully disagrees with this premise. The Panel is of the opinion that the equation is much more complex than this calculation. In this instance each vehicle sale had multiple violations of the Dealers obligations under the MVDA, and that should be captured in the rationale for determining penalties. The Panel noted a complete and utter disregard for the Code of Ethics. This is a Dealer who abandoned his obligation to provide the consumer with all the necessary information to allow them to make an informed decision. In our opinion \$1000 per vehicle is insufficient when the circumstances and the number of breaches is factored in.

To be clear as the Panel was preparing to reject this Joint Submission on Penalty, the Panel became aware that Mr. Naqvi has not been engaged in selling vehicles since March of 2024. It is the Panels understanding that Mr. Naqvi does not intend to continue selling vehicles.

With that understanding in mind, the Panel decided to accept the Joint Submission on Penalty. However, the Panel wishes to emphasise that this is the only reason we have decided to agree to this order. The Panel sees no reason to delegate resources in pursuit of a more meaningful Penalty if indeed Mr. Naqvi is no longer selling vehicles.

Having reviewed and considered the Agreed Statement of Facts, as well as the additional submissions provided by the Parties, the Reviewing Panel is satisfied that the facts as set out in the Agreed Statement of Facts support the allegations that Syed Hassan Naqvi o/a Classics Car Deal has breached subsections 7(1), 7(2), 9(1), 9(2) and 9(3), as set out in Ontario Regulation 332/08, made under the *Motor Vehicle Dealers Act, 2002*.

The Reviewing Panel also agrees, under the aforementioned circumstances, with the Parties' Joint Submission on Penalty and determines that the penalty is in the public interest and serves as a general and specific deterrence. Accordingly, the Reviewing panel makes the following Order:

1. Syed Hassan Naqvi o/a Classics Car Deal ("Naqvi") (the "Dealer") shall pay a fine in the amount of **\$3,000** no later than 120 calendar days from the date of the Discipline Committee's order.
2. Naqvi shall successfully complete the Automotive Certification Course no later than 120 calendar days from the date of the Discipline Committee's order.
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4. Naqvi 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, as may be amended from time to time.

Dated: May 23, 2024

Ontario Motor Vehicle Industry Council
Discipline Committee



Deb Mattina, Public Member

On behalf of
Joe Wade, Registrant
Wally Pietraszko, Registrant