

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 -

2125313 ONTARIO INC. o/a NEWMARKET MITSUBISHI

- AND -

MARCELLO ALGIERI

Pursuant to Rule 1.07 of the Rules of Practice before the Discipline Committee and the Appeals Committee, I, a Vice-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: December 2, 2014

Findings: Breach of Section 4 of the Code of Ethics

Order:

1. The Dealer is ordered to pay a fine in the amount of \$ 2,500 within 90 days of the date of the Discipline Committee Order.
2. Algieri is ordered to successfully complete the OMVIC certification course within 90 days of the date of the Discipline Committee Order. Any costs associated with enrolment in the course will be the responsibility of Algieri and/or the Dealer.
3. The Dealer and Algieri 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. 2125313 Ontario Inc. o/a Newmarket Mitsubishi (the "Dealer") was first registered as a motor vehicle dealer in or around May 2001. Marcello Algieri ("Algieri") was first registered as a motor vehicle salesperson in or around May 1986. At all material times, Algieri was sole officer and director of the Dealer.
2. On or about April 30, 2007, Algieri executed terms and conditions of registration 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.
3. 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, including the requirement for dealers to advertise an all-inclusive vehicle price.
4. Once the Act came into effect, the following Dealer Standard publications further reminded dealers of the requirement to advertise an all-inclusive vehicle price:
 - a. Spring 2010
 - b. Summer 2010
 - c. Spring 2011
5. Furthermore, OMVIC issued the following bulletins which also reminded dealers of the requirement to advertise an all-inclusive price:
 - a. January 2010 (2 separate publications)
 - b. April 2010 (2 separate publications)
 - c. February 2012
 - d. August 2012
6. During an inspection on or about April 30, 2010, a representative of the Registrar reminded Algieri, on behalf of the Dealer, of the requirement to ensure advertised vehicle prices include all additional fees.

7. By email dated March 28, 2014, a representative of the Registrar reminded Algieri, on behalf of the Dealer, of the requirement to ensure advertised vehicle prices include all additional fees.
8. On or about May 16, 2014, representatives of the Registrar conducted an educational presentation concerning advertising regulations at the Dealer's premises. The Dealer was again reminded of the requirement to ensure advertised vehicle prices include all additional fees.
9. On or about June 12, 2014, an advertisement was published by or on behalf of the Dealer which featured a 2013 Mitsubishi Mirage SE with a selling price of \$9,998 plus taxes. On this same date, a representative of the Registrar made inquiries about the above mentioned vehicle, while posing as a member of the public. This representative of the Registrar was advised by a representative of the Dealer that the advertised vehicle price did not include the following additional charges:
 - a. Freight
 - b. PDI
 - c. Dealer administration fees
 - d. Air tax

As such, the advertised vehicle price was not all inclusive, contrary to section 36(7) of Regulation 333/08, as well as section 4 of the Code of Ethics.

10. The Dealer has since provided the Registrar with confirmation that the Dealer subsequently sold the 2013 Mitsubishi Mirage SE vehicles that it had in stock to separate consumers for the all-inclusive price of \$9,998 plus taxes.

By failing to comply with the following section of the Act:

Regulation 333/08:

36. Advertising

7. If an advertisement indicates the price of a motor vehicle, the price shall be set out in a clear, comprehensible and prominent manner and shall be set out as the total of,
 - (a) the amount that a buyer would be required to pay for the vehicle; and
 - (b) subject to subsections (9) and (10), all other charges related to the trade in the vehicle, including, if any, charges for freight, charges for inspection before delivery of the vehicle, fees, levies and taxes.

It is thereby agreed that the Dealer and Algieri have breached the following section 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.

Joint Submission on Penalty

1. The Dealer agrees to pay a fine in the amount of \$2,500 within 90 days of the date of the Discipline Committee Order.
2. Algieri agrees to successfully complete the OMVIC certification course within 90 days of the date of the Discipline Committee Order. Any costs associated with enrolment in the course will be the responsibility of Algieri and/or the Dealer.
3. The Dealer and Algieri agree 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 Algieri breached subsection 4 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 \$2,500 within 90 days of the date of the Discipline Committee Order.
2. Algieri is ordered to successfully complete the OMVIC certification course within 90 days of the date of the Discipline Committee Order. Any costs associated with enrolment in the course will be the responsibility of Algieri and/or the Dealer.
3. The Dealer and Algieri 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



Jennifer Cooper, Vice-Chair