



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*
(hereinafter "Registrar")

- AND -

PATRICK BARNSWELL o/a QUALITY CARS FOR LESS
(hereinafter "Dealer")

Date of Hearing: March 20, 2014

Date of Decision/Order: April 28, 2014

Findings: Breach of Sections 7 and 9 of the Code of Ethics

Order:

1. The Dealer is ordered to complete the OMVIC certification course within 90 days of the date of the Discipline Committee Order.
2. The Dealer is ordered to pay a fine in the amount of \$7,500.00 in the following instalments:
 - a: \$1,500.00 within 30 days of the date of the Discipline Committee Order; and
 - b: The balance remaining of \$6,000.00 in 12 equal monthly payment of \$500.00 commencing 60 days from the date of the Discipline Committee Order. The Registrar shall set the specific due date of each monthly payment.
3. The Dealer is ordered to ensure that all current sales staff completes the OMVIC Certification course, regardless if prior completion of same, within 120 days of the Discipline Committee Order. The Dealer shall incur all costs associated with this.
4. The Dealer is ordered to ensure that any future sales people employed by the Dealer and/or his Company, have successfully completed the OMVIC certification course within 2 years of his/her employment start date.



Reasons for Decision

Introduction

This matter proceeded before a Panel of the Discipline Committee pursuant to Section 17 of the Motor Vehicle Dealer Act 2002.

The Registrar was represented by Angela La Viola and the Dealer was self-represented. The Panel consisted of Joe Wade (Chair), Jennifer Cooper (Vice-Chair), and Wally Pietraszko (Vice-Chair). Aaron Dantowitz attended as Independent Legal Counsel to the Panel.

The panel received the following documents which were accepted and marked as exhibits:

Exhibit 1: Notice of Complaint

Exhibit 2: Registrar's Book of Documents

Exhibit 3: Agreed Statement of Facts

The Agreed Statement of Facts (Exhibit 3) sets out as follows:

Summary of Agreement:

The parties to this proceeding agree that:

1. Patrick Barnswell o/a Quality Cars for Less (the "Dealer") was first registered as a motor vehicle dealer in or around November 2008. Patrick Barnswell is the sole proprietor.
2. On or about November 20 2008, the Dealer executed terms and conditions of registration. As per Condition 20, the Dealer agreed he is under a positive obligation to disclose in writing on the bill of sale all material facts about the vehicles he sells or leases to his customers.
3. In the spring of 2009, OMVIC issued a Dealer Standard publication which reminded dealers of their obligations to provide purchasers with written disclosure of all material facts about the vehicles they sell, including incidental repair histories which exceed \$3,000 and former daily rental vehicles.
4. During an inspection on or about July 13, 2009, a representative of the Registrar reviewed with the Dealer the Dealer's terms and conditions of registration and the Standards of Business Practice. In addition to this, the Dealer was reminded of his obligations to provide purchasers with written disclosure of all material facts about the vehicles he sells.



5. In or around January 2010, OMVIC issued a bulletin reminding dealers of their obligations to provide purchasers with written disclosure of all material facts about the vehicles they sell, including incident repair histories which exceed \$3,000 and former daily rental histories.
6. During an inspection, in or around May 26 2011, a representative of the Registrar the [*sic*] reminded the Dealer of his obligations to provide the purchasers with written disclosure of all material facts about the vehicle it sells, including accident repair, former daily rental and previous out of province registration histories.
7. In the summer of 2011, OMVIC issued a Dealer Standard publication which reminded dealers of their obligations to provide purchasers with written disclosure of all material facts about the vehicles they sell, including incident repair histories which exceed \$3,000.
8. In the summer of 2012, OMVIC issued a Dealer Standard publication which reminded dealers of their obligations to provide purchasers with written disclosure of a vehicle's former daily rental history.
9. On or about August 29, 2012, The Dealer purchased a 2011 Kia Rondo (VIN KNAHH8C86B764328) declared as a previous daily rental vehicle. On or about September 1 2012, the Dealer sold this vehicle without providing the purchaser with written disclosure on the bill of sale of the vehicle's former daily rental status. This is contrary to sub-section 42(7) of Regulation 333/09 as well as sections 7 and 9 of the Code of ethics. The dealer has since provided OMVIC with written confirmation from the purchaser that they are aware of their vehicle history.
10. On or about September 17, 2012, the Dealer purchased a 2006 Mazda 5, (VIN JM1CR293960105317) declared, amongst other issues, as having been previously registered in Nova Scotia. On or about September 18, 2012, the Dealer sold this vehicle without providing the purchaser with written disclosure on the bill of sale of the vehicle's previous out of province registration. This is contrary to sub-section 42(22) of Regulation 333/08 as well as section 7 and 9 of the code of ethics. The Dealer has since provided OMVIC with written confirmation from the purchaser that they are aware of their vehicles history.
11. In or around September 2012, OMVIC issued a bulletin reminding dealers of their of their obligations to provide with written disclosure of all material facts about the vehicles they sell, including incident repair histories which exceed \$3,000 and former daily rental histories.
12. On or about October 31, 2012, the Dealer purchased a 2008 Ford Edge (VIN 2FMDK48C28BB23855) declared as a previous daily rental vehicle. On or about November 1 2012, the Dealer sold this vehicle without providing the purchaser with written disclosure on the bill of sale of the vehicle's former daily rental history. This is contrary to sub-section 42(7) of Regulation 333/08 as well as section 7 and 9 of the Code of Ethics. The Dealer has since provided OMVIC with written confirmation from the purchaser that they are aware of their vehicles history.



13. On or about November 22, 2012, the Dealer purchased a 2005 Chevrolet Equinox (VIN 2CNDL13FX56087852) declared as having previously registered in Quebec. On or about November 23, 2012, the Dealer sold this vehicle without providing the purchaser with written disclosure on the bill of sale of the vehicle's previous out of province registration. This is contrary to sub-section 42(22) of Regulation 333/08 as well as sections 7 and of the Code of Ethics. The Dealer has since provided OMVIC with written confirmation from the purchaser that they are aware of their vehicles history.

14. On or about November 22, 2012, the Dealer purchased a 2012 Volkswagen Golf (VIN WVVDA7A9CW051092) declared as a previous daily rental. On or about November 27, 2012, the Dealer sold this vehicle without providing the purchaser with written disclosure on the bill of sale of the vehicle's former daily rental history. This is contrary to sub-section 42(7) of Regulation 333/08 as well as section 7 and 9 of the Code of Ethics. The Dealer has since provided OMVIC with written confirmation from the purchaser that they are aware of their vehicles history.

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

Regulation 333/08

42. Additional information in contracts of sale and leases:

(7) If any of the following is true of the motor vehicle, a statement to the 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.

(19) If the total cost of repairs to fix the damage caused to the motor vehicle by an incident exceed \$3,000, a statement to that effect and if the registered motor vehicle dealer knew the total costs, a statement of the total costs.

(22) If the motor vehicle previously received treatment in a jurisdiction other than Ontario that was equivalent to having had a permit issued under section 7 of the Highway Traffic Act or having been traded in Ontario, a statement to that effect and a statement of which jurisdictions, except if one or more permits have been issued for the vehicle under section 7 of that Act to cover at least the seven previous consecutive years.



It is thereby agreed that the Dealer has 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.

The Panel noted that certain of the particulars set out in the Notice of Complaint were not addressed in the Agreed Statement of Facts (namely, particulars 10 and 14 of the Notice of Complaint). Counsel for the Registrar advised that the Registrar was not proceeding on those particulars.

Decision of the Panel:

Having reviewed and considered the admission of the Dealer to the allegations contained in the Agreed Statement of Facts (Exhibit 3) and the documentary evidence contained in the Registrar's Book of Documents (Exhibit 2) the Panel of the Discipline Committee hereby concludes that the Dealer has breached, on 5 separate occasions, Sections 7 and 9 of the Code of Ethics as set out in Regulation 332/08, made under the *Motor Vehicle Dealers Act, 2002*.

Reasons for Decision:

Based on the Agreed Statement of Facts and documentary evidence provided in support of the Agreed Statement of Facts, the Panel is satisfied that the facts as they appear in the statement represent violations of Section 7 and 9 of the Code of Ethics, Regulation 332/08. As noted in the Agreed Statement of Facts:

Section 7 of the Code of Ethics provides:

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.

Section 9 of the Code of Ethics provides:

9. (1) In carrying on business, a registrant shall not engage in any act or omission that, having regard to all circumstances, would reasonably be regarded as disgraceful, dishonourable, unprofessional or unbecoming of a registrant.

Submissions on Penalty:



Although the parties agreed to the facts, including an admission that there had been a violation of Sections 7 and 9 of the Code of Ethics, they were unable to agree to an appropriate penalty.
Registrar's Position

The submissions of Ms. La Viola, counsel for the Registrar, on penalty were brief. She submitted that a reasonable and appropriate penalty in this case should reflect the regulatory nature of the Act and Regulations, and its objectives. The legislation requires dealers to adhere to specific rules and regulations designed to protect the public. Ms. La Viola pointed out the chronology of facts discloses a similar pattern of non-disclosure of daily rentals in the Bill of Sale and OMVIC's reminders to the Dealer of his obligation to disclose this information in writing on the Bill of Sale. Furthermore, OMVIC had conducted campaigns to educate its members of their legal obligations. This was not an issue of lack of proper knowledge on the part of the Dealer of his obligations but that he simply chose not to comply with the rules. Ms. La Viola provided the Panel with the following three prior Discipline decisions:

1. REGISTRAR, MOTOR VEHICLE DEALER ACT 2012 AND DOUGLAS FORD LINCOLN SALES LTD AND ANGELO VILARDO (January 3, 2012)
2. REGISTRAR, MOTOR VEHICLE DEALER ACT 2012 AND KENBRO AUTO ZONE INC. AND LAKHWINDER BRAR (December 19, 2013)
3. REGISTRAR, MOTOR VEHICLE DEALER ACT 2012 AND DINGWALL FORD SALES LTD AND JEFFREY DINGWALL (February 21, 2012)

All 3 cases proceeded via an Agreed Statement of Facts and Joint Submission on Penalty and included breaches of sections 7 and 9 of the Code of Ethics. The cases were presented as a yardstick to determine the range of penalties that may be imposed, the range being \$1,500.00 and \$2,250.00 per count for similar breaches.

Ms. La Viola submitted that the appropriate penalty in the circumstances should be as follows:

- Dealer shall pay a fine of \$8,000.00
- Dealer shall complete the current OMVIC certification course within 90 days

The Dealer's Position

The Dealer did not make any submissions with respect to the educational component sought by the Registrar but did express disagreement with respect to the quantum of the fine.

The Dealer did not dispute the non-disclosure on the Bill of Sale of daily rentals or previous out-of-province registration but his position was that the purchasers were aware of their vehicles' rental history at the time of the purchases. He submits that no purchasers were misled. The panel notes that the Registrar has acknowledged as fact in the Agreed Statement of Facts that the Dealer has provided written confirmation from the purchasers that they were aware.

The Dealer submits that he has full time employment in an unrelated field and sells vehicles part time as a hobby. He advised that he sells approximately 40 to 50 vehicles a year to friends and family. The Dealer acknowledged that he was aware of his disclosure obligations and that he



was reminded of this obligation on more than one occasion by OMVIC staff. The Dealer indicated that he employs sales people who may have been responsible for the non-disclosure.

The Dealer submits that due the circumstances of this case, including the part time nature of his dealership, lack of intention to knowingly mislead and misplaced reliance on this sales staff to make full disclosure, a lesser fine is appropriate. However, despite the panel inquiring as to what he thought was appropriate; the Dealer did not provide a specific amount.

Penalty Decision

Upon careful review of the evidence presented and having assessed the totality of the circumstances, the panel determined that a total fine of \$7,500.00 (payable in instalments noted above) shall be ordered. In addition, the Dealer and all current and future employees are ordered to successfully complete OMVIC's certification course (as per the details outlined above).

Reasons for Penalty:

The Panel in reaching the decision to order a fine of \$7,500.00 fully considered all the evidence and arguments presented by both parties. The purpose behind the implementation of legislation requiring the disclosure of former daily rentals and a vehicle's previous out-of-province registration is protection of the consumer. Pursuant to the Regulations, a consumer may cancel a sales contract if this information is not disclosed. As such, it is apparent that the importance of disclosing such pertinent information is paramount.

The evidence clearly demonstrates that the Dealer was aware of his obligations to disclose, was reminded of these same obligations on more than one occasion, yet failed to disclose or ensure that his sales staff disclosed the required information in writing as required. On no less than eight occasions, over almost a four year period, the Dealer was advised in person, or by Dealer bulletin of his obligations to disclose material facts on bills of sale. The Panel is satisfied that the Dealer was given sufficient opportunity and considerable time to ensure compliance, but simply chose not to do so.

In addition, the Dealer's own testimony suggests that he may have allowed his sales people to operate independently while using his Dealer's license or at a minimum with insufficient supervision or a proper understanding of their disclosure obligations. The Panel is therefore satisfied that the quantum of the fine ordered against the Dealer and further education required of him and his sales people is appropriate taking into account the chronology of facts and evidence presented. Finally, the Panel is satisfied that the totality of the Order is significant enough to act as a specific deterrent to the Dealer and a general deterrent to others in the industry.



Ontario Motor Vehicle Industry Council
Conseil ontarien
de commerce des véhicules automobiles

Ontario Motor Vehicle Industry Council
Discipline Panel



Joe Wade, Chair

Jennifer Cooper, Vice Chair

Wally Pietraszko, Vice Chair