

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 -

997170 ONTARIO INC. o/a ANDREW WINDSOR AUTO SALES

- AND -

AZER SHALABY

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: February 5, 2015

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

Order:

1. The Dealer agrees to pay a fine in the amount of \$4,000. The first \$1,000 of this fine is due within 30 days of the date of the Discipline Committee Order, and the remaining \$1,000 instalments shall respectively become due within 120 days, 210 days and 300 days of the date of the Discipline Committee Order. The fine is payable to the Ontario Motor Vehicle Industry Council.
2. Shalaby agrees to successfully complete the OMVIC certification course, within 90 days of the date of the Discipline Committee Order. The Dealer will incur all costs associated with this.
3. The Dealer agrees to offer all registered salespeople the opportunity to complete the OMVIC certification course, within 90 days of the date of the Discipline Committee Order. The dealer will incur all costs associated with this.
4. The Dealer agrees to 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. 997170 Ontario INC. o/a Andrew Windsor Auto Sales (the "Dealer") was first registered as a motor vehicle dealer in or around March 1993. Azer Shalaby ("Shalaby") was first registered as a motor vehicle salesperson in or around March 1993. At all material times, Shalaby was the officer and director of the Dealer.
2. On or around May 1, 2008, the Dealer executed terms and conditions of registration, a copy of which are attached hereto as schedule "A". As per condition 6, the Dealer agreed to comply with OMVIC's Code of Ethics and Standards of Business Practice as may be amended from time to time. As per condition 8, the Dealer agreed to maintain a garage register in accordance with the *Highway Traffic Act*. As per condition 20, the Dealer agreed to ensure to disclose all material facts including, but not limited to accident and repair and Ministry of Transportation brand. As per condition 28 the Dealer agreed to maintain a bank account in the Dealers name, and to ensure that all financial transactions of the Dealer are processed through these accounts.
3. In or around December 2008, OMVIC issued a bulletin advising dealers of up and coming changes to the Act. These changes included enhanced disclosure requirements that are to be in writing on the purchase agreement.
4. In the winter of 2008, OMVIC issued a Dealer Standard advising dealers of up and coming changes to the Act. These changes included enhanced disclosure requirements that are to be in writing on the purchase agreement.
5. In a letter dated September 28, 2011, a representative of the Registrar reminded the Dealer to ensure to disclose all accidents exceeding \$3,000 and Ministry of Transportation brand, in writing, on the purchase agreement. The Dealer was also reminded of their signed terms and conditions, including, but not limited to maintaining a garage register as per the *Highway Traffic Act*.
6. In the summer of 2012, OMVIC issued a dealer standard reminding dealers of the requirements to ensure material facts are to be in writing on the bill of sale.
7. In or around September 2012, OMVIC issued a bulletin reminding dealers of the requirements to ensure all material facts are to be in writing on the bill of sale.

8. On or about December 3, 2012, the Dealer purchased a 2003 Jeep Liberty (VIN 1J4GL58K53W690736) with the following declarations:

- Vehicle has been declared as a total loss by the insurer
- The manufacturers [sic] warranty has been cancelled
- Repair estimate \$6,941

On or about December 24, 2012 the Dealer sold this vehicle without providing the purchaser with all the required written disclosure, contrary to section 42 of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. The Dealer has subsequently provided OMVIC with written confirmation from the purchaser that they are now fully aware of their pertinent vehicle history.

9. On or before May 24, 2013, the Dealer purchased a 2004 Chevrolet Trailblazer (VIN 1GNET16S546136923). This vehicle had suffered damage from an incident in the amount of \$17,302 and \$6,844. On or about May 24, 2013, the Dealer leased this vehicle without providing the purchaser with the required written incident disclosure, contrary to section 42 of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. The Dealer has subsequently provided OMVIC with written confirmation from the purchaser that they are now fully aware of their pertinent vehicle history.

10. On or about January 24, 2013. The Dealer purchased a 2003 Saturn (VIN 1G8AJ52F93Z201275) with the following declarations:

- Vehicle has been declared as a total loss by the insurer
- The manufacturers [sic] warranty has been cancelled
- Repair estimate \$2,780

This vehicle had suffered damage from an incident in the amount of \$7,957. On or about May 1, 2013, the Dealer sold this vehicle without providing the purchaser with all the required written disclosure, contrary to section 42 of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. The Dealer has subsequently provided OMVIC with written confirmation from the purchaser that they are now fully aware of their pertinent vehicle history.

11. On or about November 6, 2013, the Dealer purchased a 2000 Mitsubishi (VIN JA4MT31H5YP043745) declared as having adjacent panels replaced. This vehicle is also branded rebuilt through the Ministry of Transportation. On or about May 17, 2013, the Dealer leased this vehicle without providing the purchaser with all the required written disclosure, contrary to section 42 of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. The Dealer has subsequently provided OMVIC with written confirmation from the purchaser that they are now fully aware of their pertinent vehicle history.

By failing to comply with the following regulations under the *Motor Vehicle Dealers Act, 2002*:

Additional disclosure information in contracts

42. (19) If the total cost 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.

(21) If the motor vehicle was declared by an insurer to be a total loss, regardless of whether the vehicle was classified as irreparable or as salvage under section 199.1 of the *Highway Traffic Act*, a statement to that effect.

(25) Any other fact about the motor vehicles that, if disclosed, could reasonably be expected to influence the decision of a reasonable purchaser or lessee to buy or lease the vehicle.

It is thereby agreed that the Dealer and Shalaby 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 agrees to pay a fine in the amount of \$4,000. The first \$1,000 of this fine is due within 30 days of the date of the Discipline Committee Order, and the remaining \$1,000 instalments shall respectively become due within 120 days, 210 days and 300 days of the date of the Discipline Committee Order. The fine is payable to the Ontario Motor Vehicle Industry Council.
2. Shalaby agrees to successfully complete the OMVIC certification course, within 90 days of the date of the Discipline Committee Order. The Dealer will incur all costs associated with this.
3. The Dealer agrees to offer all registered salespeople the opportunity to complete the OMVIC certification course, within 90 days of the date of the Discipline Committee Order. The dealer will incur all costs associated with this.
4. The Dealer agrees to 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 and Shalaby 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 agrees to pay a fine in the amount of \$4,000. The first \$1,000 of this fine is due within 30 days of the date of the Discipline Committee Order, and the remaining \$1,000 instalments shall respectively become due within 120 days, 210 days and 300 days of the date of the Discipline Committee Order. The fine is payable to the Ontario Motor Vehicle Industry Council.
2. Shalaby agrees to successfully complete the OMVIC certification course, within 90 days of the date of the Discipline Committee Order. The Dealer will incur all costs associated with this.
3. The Dealer agrees to offer all registered salespeople the opportunity to complete the OMVIC certification course, within 90 days of the date of the Discipline Committee Order. The dealer will incur all costs associated with this.
4. The Dealer agrees to 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