

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 -

STERLING AUTO INC. o/a SUBARU OF HAMILTON

- AND -

TREVOR LECLUSE

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: June 23, 2015

Findings: Breach of Section 4 of the Code of Ethics

Order:

1. The Dealer is ordered to pay a fine in the amount of \$5,000 within 90 days of the date of the Discipline Committee Order.
2. The Dealer is ordered to offer future and current sales staff the OMVIC Certification Course. Sales staff will be offered the course within 90 days of acceptance of this offer. Future sales staff will be offered the course within 90 days of being retained in this capacity by the Dealer. The Dealer will pay all costs associated with this. It is understood between the parties this clause does not apply to sales staff who have completed the course or who are otherwise required to do so pursuant to the Act. The General Manager in charge of sales for the Dealer has recently completed the OMVIC Certification Course.
3. The Dealer shall 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. Sterling Auto Inc. o/a Subaru of Hamilton (the "Dealer") was first registered as a motor vehicle dealer on or about July 2002. Trevor Lecluse ("Lecluse") was first registered as a motor vehicle salesperson on or about October 2006. At all material times Lecluse was an officer and director of the Dealer.
2. During an inspection on or about April 28, 2014, a representative of the Registrar found the following concerns:
 - A. On or before March 4, 2014, an advertisement was placed by or on behalf of the Dealer for a 2012 Subaru Outback (Stock # U0972). On or about March 4, 2014, the Dealer sold this vehicle and added fees of \$603 over the advertised price. As such, the advertisement did not promote an all-in price. This is contrary to section 36(7) of Regulation 333/08, as well as section 4 of the Code of Ethics. The Dealer has subsequently refunded this purchaser \$603 plus HST.
 - B. On or before April 1, 2014, an advertisement was placed by or on behalf of the Dealer for a 2013 Subaru Outback (Stock # S2904). On or about April 1, 2014, the Dealer sold this vehicle for \$204 over the advertised price. As such, the advertisement did not promote an all-in price. This is contrary to section 36(7) of Regulation 333/08, as well as section 4 of the Code of Ethics. The Dealer has subsequently refunded this purchaser \$204 plus HST.
 - C. On or before March 31, 2014, an advertisement was placed by or on behalf of the Dealer for a 2012 Subaru Forester (Stock # U0949). On or about March 31, 2014, the Dealer sold this vehicle for \$204 over the advertised price. As such, the advertisement did not promote an all-in price. This is contrary to section 36(7) of Regulation 333/08, as well as section 4 of the Code of Ethics. The Dealer has subsequently refunded this purchaser \$204 plus HST.
 - D. On or before April 12, 2014, an advertisement was placed by or on behalf of the Dealer for a 2011 Subaru Impreza (Stock # U0980). On or about April 12, 2014, the Dealer sold this vehicle for \$204 over the advertised price. As such, the advertisement did not promote an all-in price. This is contrary to section 36(7) of Regulation 333/08, as well as section 4 of the Code of Ethics. The Dealer has subsequently refunded this purchaser \$204 plus HST.



- E. On or about April 1, 2014, an advertisement was placed by or on behalf of the Dealer for a 2011 Subaru Impreza (Stock# U0911). On or about April 1, 2014, the Dealer sold this vehicle for \$268 over the advertised price. As such, the advertisement did not promote an all-in price. This is contrary to section 36(7) of Regulation 333/08, as well as section 4 of the Code of Ethics. The Dealer has subsequently refunded this purchaser \$268 plus HST.

By failing to comply with Regulation 333/08 of the *Motor Vehicle Dealers Act, 2002*:

Advertising

36(7) If an advertisement indicates a price for a motor vehicle, the price shall be set out in a clear, comprehensible and prominent manner and shall be set out as a total of,

- a) the amount the 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 Lecluse have breached the following sections 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 to those vehicles.

Joint Submission on Penalty

1. The Dealer agrees to pay a fine in the amount of \$5,000 within 90 days of the date of the Discipline Committee Order.
2. The General Manager in charge of sales for the Dealer has recently completed the OMVIC Certification Course. The Dealer agrees to offer future and current sales staff the OMVIC Certification Course. Sales staff will be offered the course within 90 days of acceptance of this offer. Future sales staff will be offered the course within 90 days of being retained in this capacity by the Dealer. The Dealer will pay all costs associated with this. It is understood between the parties this clause does not apply to sales staff who have completed the course or who are otherwise required to do so pursuant to the Act.
3. 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 Lecluse 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 \$5,000 within 90 days of the date of the Discipline Committee Order.
2. The Dealer is ordered to offer future and current sales staff the OMVIC Certification Course. Sales staff will be offered the course within 90 days of acceptance of this offer. Future sales staff will be offered the course within 90 days of being retained in this capacity by the Dealer. The Dealer will pay all costs associated with this. It is understood between the parties this clause does not apply to sales staff who have completed the course or who are otherwise required to do so pursuant to the Act. The General Manager in charge of sales for the Dealer has recently completed the OMVIC Certification Course.
3. The Dealer shall 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

