

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

MOHAMED EZZEDINE NAASANI o/a
FIRST CLASSE AUTO – SERVICE CENTER AND CAR SALES (the "Dealer")

Date of Hearing: September 12, 2014

Date of Decision: October 1, 2014

Findings: Breach of Sections 42 and 53 of Ontario Regulation 333/08 and Sections 7 and 9 of the Code of Ethics as set out in Regulation 332/08.

Order:

1. The dealer is ordered to pay a fine in the amount of \$17,100.00. This amount shall be paid in four installments of \$4,275.00 each. The first installment is due within 90 days of the date of the Discipline Committee Order with each of the remaining payments due within 90 days of the previous payment. All payments must be received within a one year period following the date of this order.
2. Mohamed Ezzedine Naasani is ordered to attend in person and complete, the OMVIC certification course (the "course") within 90 days of the date of the Discipline Committee Order. The Dealer will incur all costs associated with this.

Reasons for Decision

Introduction

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

At the time the hearing was scheduled to commence the Dealer was not present. The matter was held down for thirty minutes. Upon reconvening the Dealer was still not present. The



hearing began in the Dealer's absence. During a short recess relating to a preliminary matter OMVIC's counsel became aware that the Dealer had attended to the wrong site for the hearing. When he advised the Panel of the circumstances the proceedings were immediately held down to await the Dealers arrival as it was clear the Dealer intended to speak to the matters before the Panel. In the interest of natural justice, once the Dealer arrived the hearing commenced anew right from opening remarks.

The Registrar was represented by Michael Rusek. The dealer was self represented. The Panel consisted of Debra Mattina (Chair), Abolfazl Mohammadi-Rad (Vice-Chair), and Joe Wade (Vice-Chair). Aaron Dantowitz attended as Independent Legal Counsel to the Panel.

As the Dealer was unrepresented, the proceedings were explained to Mr. Naasani prior to commencement and he was asked if he was comfortable proceeding without representation. Mr. Naasani confirmed he was prepared to proceed.

The panel marked:

- The Notice of Complaint as Exhibit #1
- The Notice of Hearing as Exhibit #2,
- ONBIS Corporate Inquiry Report as Exhibit #3,
- O MVIC Inspection Report Dated May 28, 2008 as Exhibit #4,
- OMVIC Dealer Bulletin as Exhibit #5,
- OMVIC Dealer Standard as Exhibit #6
- Supporting Documents Re: VIN5TDBK23C87S008407 as Exhibit #7,
- Supporting Documents Re: VIV1FAFP343X3W142813 as Exhibit #8,
- Supporting Documents Re: VIN1G2ZF55B364258709 as Exhibit #9,
- Supporting Documents Re: VINWDDFH33X07J174156 as Exhibit #10,
- Supporting Documents Re: VINJN1CY0AP3AM911843 as Exhibit #11,
- Supporting Documents Re: VINKNAGE123475070852 as Exhibit #12,
- OMVIC Dealer Bulletin as Exhibit #13,
- Supporting Documents Re: VIN2G4WJ532751356924 as Exhibit #14,
- Supporting Documents Re: VIN4JGCB75E66A009692 as Exhibit #15,
- OMVIC Inspection Report dated February 25, 2013 as Exhibit 16,
- Letter from Lisa Campbell dated September 5, 2014 as Exhibit #17,
- Letter from James Renaud, undated, as Exhibit # 18,
- Copy of an Email from Cara Anary, undated, as Exhibit #19.

While the parties had attempted to resolve the matter by agreement prior to coming to the hearing they were unsuccessful. The Chair took the Dealer's plea. Mr. Naasani accepted the facts as presented in paragraphs 1 through 13 in the Notice of Complaint as being accurate. Although Mr. Naasani agrees the facts are accurate he believes that his actions absolve him of any breaches with respect to any attempt to withhold required information from the purchaser.

Facts:

The facts as set out in the Notice of Complaint, which, as noted above, the Dealer did not dispute, are as follows:

1. Mohamed Ezzedine Naasani o/a First Classe Auto – Service Center and Car Sales (the "Dealer") was first registered as a motor vehicle dealer in or around August 1994. At all material times Mohamed Ezzedine Naasani ("Naasani") was the sole proprietor of the Dealer.
2. During an inspection on or about May 28, 2008, the Dealer was advised of his obligation to ensure purchasers are provided with written disclosure on the bill of sale of all material facts about the vehicles he sells.
3. In or around January 2010, OMVIC issued a bulletin reminding dealers of their obligation to ensure all material facts about the vehicles they sell are disclosed in writing on the bill of sale.
4. In the summer of 2011, OMVIC issued a Dealer Standard publication which reminded dealers of their obligation to ensure all material facts about the vehicles they sell are disclosed in writing on the bill of sale.
5. On or before May 22, 2012, the Dealer purchased a 2007 Toyota Sienna (VIN 5TDBK23C87S008407). The Dealer was unable to provide a representative of the Registrar with the wholesale bill of sale for this vehicle, contrary to section 53 of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. On or about May 22, 2013, the Dealer sold this vehicle without providing the purchaser with written disclosure of the dollar amount of the vehicle's accident repair history. This is contrary to section 42(19) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics.
6. On or before June 18, 2012, the Dealer purchased a 2003 Ford Focus (VIN 1FAFP343X3W142813). The Dealer was unable to provide a representative of the Registrar with the wholesale bill of sale for this vehicle, contrary to section 53 of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. On or about May 22, 2012, the Dealer sold this vehicle without providing the purchaser with written disclosure of the vehicle's accident repair history. This is contrary to section 42(19) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics.
7. On or before July 8, 2012, the Dealer purchased a 2006 Pontiac G6 (VIN 1G2ZF55B364258709). The Dealer was unable to provide a representative of the Registrar with the wholesale bill of sale for this vehicle, contrary to section 53 of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. On or about July 8, 2012, the Dealer sold this vehicle without providing the purchaser with written disclosure of the dollar amount of the vehicle's accident repair history. This is contrary to section 42(19) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics.
8. On or before July 19, 2012, the Dealer purchased a 2007 Mercedes B200 (VIN WDDFH33X07J174156). The Dealer was unable to provide a representative of the Registrar with the wholesale bill of sale for this vehicle, contrary to section 53 of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. On or about July 19, 2012, the Dealer sold this vehicle without providing the purchaser with written disclosure of both the vehicle's MTO brand, and the dollar amount of the vehicle's accident repair history. This is contrary to sections 42(19) and 42(23) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics.
9. On or before July 28, 2012, the Dealer purchased a 2010 Nissan Infiniti (VIN JN1CY0AP3AM911843). The Dealer was unable to provide a representative of the

Registrar with the wholesale bill of sale for this vehicle, contrary to section 53 of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. On or about July 28, 2012, the Dealer sold this vehicle without providing the purchaser with written disclosure that the vehicle was previously registered in the California. This is contrary to section 42(22) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics.

10. On or before September 25, 2012, the Dealer purchased a 2007 Kia Optima (VIN KNAME123475070852). The Dealer was unable to provide a representative of the Registrar with the wholesale bill of sale for this vehicle, contrary to section 53 of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. On or about September 25, 2012, the Dealer sold this vehicle without providing the purchaser with written disclosure of the dollar amount of the vehicle's accident repair history. This is contrary to section 42(19) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics.
11. In or around September 2012, OMVIC issued a bulletin reminding dealers of their obligation to ensure all material facts about the vehicles they sell are disclosed in writing on the bill of sale.
12. On or before October 20, 2012, the Dealer purchased a 2005 Buick Allure (VIN 2G4WJ532751356924). The Dealer was unable to provide a representative of the Registrar with the wholesale bill of sale for this vehicle, contrary to section 53 of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. On or about October 20, 2012, the Dealer sold this vehicle without providing the purchaser with written disclosure of the dollar amount of the vehicle's accident repair history. This is contrary to section 42(19) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics.
13. On or about October 31, 2012, the Dealer purchased a 2006 Mercedes R500 (VIN 4JGCB75E66A009692) with the following declarations:
 - a. Vehicle has been declared a total loss by the insurer
 - b. The manufacturers [sic] warranty has been cancelled
 - c. Repair estimate: 20,293.67

On or about December 18, 2012, the Dealer sold this vehicle without providing the purchaser with a compliant bill of sale, as required by section 42 of Regulation 333/08. Moreover, the Dealer failed to disclose that the vehicle had been declared a total loss, that the vehicle's warranty had been cancelled and the dollar amount of the vehicle's accident repair history. This is contrary to sections 42(19), 42(20) and 42(21) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics.

Evidence:

OMVIC's documentary evidence in this matter was undisputed. OMVIC called one witness, Galyne Cini, an inspector with OMVIC for 15 years. Her first encounter with the Dealer was in May 2008. She testified that the garage register book was not on site and she included in her notes that the Dealer was not disclosing material facts properly. During the May 2008 inspection Ms. Cini discussed the requirements of proper disclosure with the dealer. During an inspection in February 2013, Ms. Cini noted once again that the dealer did not have the garage register on site. She confirmed the Dealer did not maintain a garage registry and he did not

provide a reason to her. Other required documents were also missing for which the Dealer offered explanations that his accountant had them, or they were with "gst" or at home but none of the missing documents were logged as signed out. In February 2013, once again Ms. Cini attended the Dealer's premises and found the dealer continued to have the same issues. She had a detailed discussion with the Dealer about his disclosure requirements. Her report indicated that the Dealer had a good understanding of the requirements and that he understood that he could not pick and choose which items to disclose. During the inspection Mr. Naasani reported to Ms. Cini that he sells 3 to 5 vehicles per month.

Mr. Naasani testified that he felt he did not need to include all the relevant and material information about his vehicles in writing on the bill of sale as it was his practice to show the damage to his perspective buyers either first hand or in photographs. Mr. Naasani testified that he sells 1 to 2 vehicles per month. Mr. Naasani insisted that there was never any attempt to be anything other than honest and up front with his clients. He portrayed himself as a small dealer who has excellent relationships with his customers. Mr. Naasani stated that his customers come to him looking for certain models of cars which he can provide at prices much lower than market prices. He submitted into evidence three endorsement letters and emails he stated were provided to him by three very satisfied customers. At face value the letters appear to confirm these particular customers knew what they were purchasing from him.

The Panel however is unable to assign any weight to the letters. Two of the documents are undated and none of the authors of the letters were present to confirm they in fact had written the letters. There is simply no basis upon which the Panel can evaluate the accuracy or authenticity of the documents.

Decision of the Panel:

The panel is satisfied that the facts as submitted by OMVIC and agreed to by Mr. Naasani do in fact constitute breaches of Sections 42 and 53 of Ontario Regulation 333/08 and Sections 7 and 9 of the Code of Ethics as set out in Regulation 332/08. OMVIC has satisfied its obligation to establish that the facts support the allegations. The burden of proof on a balance of probabilities is met.

Reasons for Decision:

The facts are indisputable. Mr. Naasani does not deny any of the facts but rather he suggests that as long as the customer comes into possession of the required information that it does not matter how that occurs, this despite reviewing during both the 2008 and the 2013 site inspections his duty to meet the requirements. Whether or not the letters allegedly provided by his customers are authentic is irrelevant as they provide no insight into the Dealer's refusal to meet his obligation to put the material facts in writing on the bill of sale. No matter how happy his customers may be the fact remains that Mr. Naasani is not in compliance with the regulations.

Section 42 of O. Reg. 333/08 prescribes certain information that a dealer "shall ensure" is included on any contract of sale. reads, in relevant part, as follows:

19. If the total costs 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.
20. If the manufacturer's warranty on the motor vehicle was cancelled, a statement to that effect.
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.
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.
23. If the motor vehicle has been classified, under section 199.1 of the *Highway Traffic Act*, as irreparable, salvage or rebuilt, a statement as to how it was last classified.

In addition, section 53(1) of O.Reg. 333/08 prescribes that "A registered motor vehicle dealer shall maintain records of" various transactions, including, under s. 53(1)(h), "each purchase of a motor vehicle by the dealer, including as a trade-in".

The Discipline Committee is satisfied that the Dealer simply chose to ignore the requirements under both Section 42 to disclose material facts and under Section 53 to retain specific documentation. The regulations are very clear. The use of the term "shall" makes these very direct and specific terms. There is no opportunity to interpret these terms as optional. They are quite simply mandatory regardless of any other action one might take to inform the consumer. They are not exemptible.

It is clear that the intent of the legislation was to ensure that every consumer would be provided with all material facts in writing so that they could make a decision armed with all the relevant history of the vehicle. The consumer is protected in the knowledge that they are receiving exactly what they expect to receive. The Dealer is protected in the event of a customer complaint alleging they were not informed as the bill of sale would clearly state all of the material facts which were disclosed. The industry is protected by requiring all dealers to provide full disclosure of material facts. No dealer is exempt therefore no dealer has an advantage over another.

Beyond the non-exemptible interpretation of the regulations, the Panel was not convinced by the evidence of Mr. Naasani that he was in fact disclosing all material facts to his customers. He had every opportunity to bring witnesses and did not. Mr. Naasani could have provided the Panel with affidavit evidence from his customers and did not. It must be reiterated, however, that the regulations are non exemptible and at best such evidence could only be considered in terms of mitigating factors as the facts remain that Mr. Naasani did not disclose, by his own admission, all material facts in writing on the bills of sale.

Mr. Naasani's testimony is not consistent with the documentary evidence which he confirmed as accurate. One such inaccuracy comes in the discrepancy regarding how many vehicles he sells. An analysis for this change in reported income is addressed in the penalty submissions.

Section 7 of the Code of Ethics (O. Reg 332/08) reads as follows:

Compliance

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.

It is clear that the Dealer registrant is in breach of the Code of Ethics at section 7 in that he failed to 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. This is demonstrated both in the failure to maintain a garage registry and in the Dealer's failure to comply with his obligations to put in writing all material facts on the bill of sale.

Section 9 of the Code of Ethics reads as follows:

Professionalism

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. O.Reg. 332/08

The Dealer in carrying on business, as he did, failing to meet his disclosure obligations and failing to maintain required documentation, engaged in acts and omissions that, having regard to all of the circumstances, would reasonably be regarded as unprofessional, dishonourable and unbecoming of a registrant. The Panel is satisfied the behaviour of the Dealer did not cross the threshold into disgraceful conduct. The Panel considers disgraceful conduct to be conduct which encompasses deceit and dishonesty with a greater threshold of moral failure.

Submissions on Penalty

Mr. Rusek requested on behalf of OMVIC fines of \$1,000.00 per count on 19 counts relating to the sale of 6 vehicles for a total of \$19,000.00. In addition Mr. Rusek submitted that the Dealer should be ordered to complete OMVIC's certification course within 90 days of the date of this order.

Two previous Discipline Decisions were submitted by Mr. Rusek to assist the Panel in determining whether or not the penalty requested is consistent and within the range of other penalties in cases of similar nature and findings. The cases were: *Registrar, Motor Vehicle Dealers Act, 2002* and *Bennett Chevrolet Cadillac Buick GMC Ltd o/a Bennett GM and David Bennett and Registrar, Motor Vehicle Dealers Act, 2002* and *Lakeshore Motors LTD and Phuong Nguyen*.

Mr. Naasani held himself out as a small dealer with a somewhat repeat customer base. The Dealer reported to Ms. Cini at the 2013 site inspection that he sold 3 to 5 cars per month, but told the Panel during submissions he sells only 1 to 2 vehicles per month. He portrayed himself as a family man with limited financial resources. Mr. Naasani submitted that he believes no one was harmed, that he was honest with his customers and he has complied since being charged and therefore the penalties requested are too high.

Decision on Penalty

The Panel was unanimous in its determination that the penalty must be significant. The Panel did recognize that the Dealer's business is small, but not as small as he would have us believe. In the discipline decisions submitted at the hearing the Panel noted that the penalty ranged from approximately \$750.00 per count to \$1,000.00 per count. Ultimately the Panel settled on a \$900.00 fine per count for a total of \$17,100.00. In addition the Panel determined that it was appropriate to order Mr. Naasani to take the OMVIC certification course, a course he has not previously taken.

Reasons for Penalty:

It is clear from the evidence that the Dealer was aware of his obligations at least as early as May of 2008. The evidence tells a tale of a Dealer who, despite receiving bulletins, publications and one on one instruction and review, steadfastly refused to comply with his obligations, even though he was aware of them, until he was charged. Upon being charged he became immediately compliant. This tells the Panel two things: that without the threat of penalty this Dealer would likely never have voluntarily complied, and that if the Penalty was not significant enough the Dealer would likely revert to previous behaviour and consider a small fine the cost of doing business. The Panel understands it is not bound by decisions of previous discipline panels and reviewed the submitted decisions with that in mind. The Panel was however also mindful penalties should be consistent where facts and charges are similar. The orders were reviewed by the Panel.

During penalty submissions Mr. Naasani attempted to minimize his financial resources, likely in the hope of influencing the Panel's decision during penalty deliberations; presumably the Panel would associate lower profits margins with lower penalty amounts. Although the attempt had only a minor affect on the amount ordered the Panel did extend the time for payment over the course of a one year period with the intent of making the installments manageable.

Certainly, it is not the intent of this Panel to drive the Dealer out of business or to create a unrecoverable financial hardship but the penalty must be significant enough to deter the Dealer from continuing to breach his obligations under the legislation. It must also be significant enough to deter other registrants from side stepping their obligations under the law. In handing down penalties significant enough to deter both the individual dealer and the profession as a whole the Panel is assured that the mandate to protect the public is met.

With respect to the penalty in this order the Panel is satisfied it meets all the goals of specific and general deterrence, public protection and provides an opportunity for remediation as it relates to the Dealer Certification course.

Ontario Motor Vehicle Industry Council
Discipline Panel



Debra Mattina, *Chair*
Abolfazl Mohammadi-Rad, *Vice Chair*
Joe Wade, *Vice Chair*