

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 -

2226960 ONTARIO INC o/a ANDERSON KIA

- AND -

LEE ANDERSON

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: August 28, 2020

Findings: Breach of Sections 4, 6, 7 and 9 of the Code of Ethics

Order:

1. The Dealer is ordered to pay a fine in the amount of \$4,000 no later than **November 30, 2020.**
2. Anderson Kia is ordered to successfully complete the MVDA Key Elements Course Automotive no later than **November 30, 2020.**
3. The Dealer is ordered to ensure all sales staff employed by the Dealer have reviewed the August 2017 OMVIC advertising webinar. The Dealer will provide OMVIC with written confirmation from said staff that this has occurred, no later than **November 30, 2020.**



4. The Dealer is ordered to offer all current and future sales staff the opportunity to complete the Course. Current sales staff will be offered the Course no later than **November 30, 2020**. Future sales staff will be offered the Course within 90 days of being retained in this capacity. The Dealer will incur all costs associated with this. It is understood between the parties this clause does not apply to sales staff who have completed the Course after January 1, 2009, or who are otherwise required to do so pursuant to the Act.

5. The Dealer and Anderson agree to 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. 2226960 Ontario Inc o/a Anderson Kia (the "Dealer") was first registered as a motor vehicle dealer in around January 2010. Lee Anderson ("Anderson") was first registered as a motor vehicle sales person in around August 1996. Since becoming registered, Anderson has been the sole officer, as well as a person in charge of the day to day activities of the Dealer.

2. On or about March 10, 2010, Anderson successfully completed Automotive Certification course (the "Course"). Included in the Course materials is dealers requirement to advertise all-inclusive vehicle prices ("all-in pricing").

OMVIC registrant education re: all-in pricing

1. Since the Act was proclaimed, OMVIC has issued the following publications and webinars reminding dealers of their all-in pricing obligations, all of which continue to be available on OMVIC's website:

	Dealer Standard		Bulletin		Webinar
A	Winter 2008	U	January 2010	BB	April 2015
B	Spring 2010	V	April 2010	CC	April 2017
C	Spring 2011	W	February 2012		



D	Winter 2013	X	August 2012		
E	Spring 2013	Y	April 2014		
F	Summer 2013	Z	June 2014		
G	2014: Issue 1	AA	April 2015		
H	2014: Issue 2				
I	2014: Issue 3				
J	2014: Issue 2				
K	2015: Issue 3				
L	2015: Issue 4				
M	2016: Issue 1				
N	2016: Issue 2				
O	2016: Issue 3				
P	2016: Issue 4				
Q	2017: Issue 2				
R	2017: Issue 3				
S	2018: Issue 2				
T	2019: Issue 2				

Direct correspondence with Dealer:

2. During an inspection on or about June 5, 2014, the Dealer was reminded of its all-in pricing obligations.

Dealer's current non-compliance

3. During an inspection on or about November 20, 2019, a representative of the Registrar found the Dealer had sold the following 2 vehicles, above their advertised prices:
 - a. On or about October 30, 2019, the Dealer sold a 2012 Kia Optima (Stock# 20028A). The Dealer added a \$199 administration fee, as well as the \$10 OMVIC fee to the vehicle's advertised price of \$9,995. As such, the Dealer's advertised price was not all inclusive. This is contrary to section 36(7) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics. The Dealer made unsuccessful attempts to contact the purchaser regarding this.
 - b. On or about November 11, 2019, the Dealer sold a 2017 Kia Sportage (Stock# 20088A). The Dealer added a \$199 administration fee to the vehicle's advertised price of \$18,995. Initially, this appeared to be contrary to the "all-in pricing" scheme required by Ontario Regulation 333/08. The consumer has since confirmed that they agreed to the administration fee, which formed a part of the vehicle price negotiations, and which included an additional winter tire package. While the purchaser was apparently aware of the additional fee, the bill of sale failed to itemize the tire package and its retail value. This is contrary 40(2) of Regulation 333/08, as well as sections 4, 7 and 9 of the Code of Ethics.



4. As a person in charge of the Dealer, Anderson has failed to ensure that the Dealer conducts its business in compliance with the Act and Code of Ethics and thus has personally contravened sections 6 and 9 of the Code of Ethics.

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.

40. Contracts for sales of used motor vehicles

(2) A registered motor vehicle dealer shall ensure that any contract that the dealer enters into to sell a used motor vehicle to a purchaser who is not another registered motor vehicle dealer includes, in a clear, comprehensible and prominent manner, the following:

1. The matters required under paragraphs 1 to 3, 5 to 10, 14 to 19 and 21 to 27 of subsection 39 (2).

39. Contracts for sales of new motor vehicles

(2) A registered motor vehicle dealer shall ensure that any contract that the dealer enters into to sell a new motor vehicle to a purchaser who is not another registered motor vehicle dealer includes, in a clear, comprehensible and prominent manner, the following:

15. An itemized list of items or inducements, including guarantees or extended warranties, service plans or rights under sales policies if the dealer has agreed to provide the items or inducements to the purchaser and there is no extra charge to the purchaser for them beyond the total sale price of the motor vehicle under the contract, and the list shall show a fair and accurate description and the retail value, if any, of each of the items or inducements.

It is thereby agreed that the Dealer has breached section 4(2) of the Code of Ethics, as set out in regulation 332/08:

Disclosure and marketing:

4(2) A registrant shall ensure that all representations, including advertising, made by or on behalf of the registrant in connection with trading in motor vehicles, are legal, decent, ethical and truthful.

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.



It is thereby agreed that Anderson has breached section 6(2) of the Code of Ethics, as set out in Regulation 332/08;

Accountability:

6(2) A registered salesperson shall not do or omit to do anything that causes the registered motor vehicle dealer who employs or retains the salesperson to contravene this Regulation or any applicable law with respect to trading in motor vehicles.

It is thereby agreed that the Dealer and Anderson have breached section 9(1) of the Code of Ethics, as set out in Regulation 332/08:

Professionalism

9 (3) A registrant shall use the registrant's best efforts to prevent error, misrepresentation, fraud or any unethical practice in respect of a trade in a motor vehicle.

Joint Submission on Penalty

1. The Dealer agrees to pay a fine in the amount of \$4,000 no later than **November 30, 2020.**
2. Anderson Kia agrees to successfully complete the MVDA Key Elements Course Automotive no later than **November 30, 2020.**
3. The Dealer agrees to ensure all sales staff employed by the Dealer have reviewed the August 2017 OMVIC advertising webinar. The Dealer will provide OMVIC with written confirmation from said staff that this has occurred, no later than **November 30, 2020.**
4. The Dealer agrees to offer all current and future sales staff the opportunity to complete the Course. Current sales staff will be offered the Course no later than **November 30, 2020.** Future sales staff will be offered the Course within 90 days of being retained in this capacity. The Dealer will incur all costs associated with this. It is understood between the parties this clause does not apply to sales staff who have completed the Course after January 1, 2009, or who are otherwise required to do so pursuant to the Act.
5. The Dealer and Anderson 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 Anderson breached subsections 4, 6, 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 is ordered to pay a fine in the amount of \$4,000 no later than **November 30, 2020.**
2. Lee Anderson ordered to successfully complete the MVDA Key Elements Course Automotive no later than **November 30, 2020.**
3. The Dealer is ordered to ensure all sales staff employed by the Dealer have reviewed the August 2017 OMVIC advertising webinar. The Dealer will provide OMVIC with written confirmation from said staff that this has occurred, no later than **November 30, 2020.**
4. The Dealer is ordered to offer all current and future sales staff the opportunity to complete the Course. Current sales staff will be offered the Course no later than **November 30, 2020.** Future sales staff will be offered the Course within 90 days of being retained in this capacity. The Dealer will incur all costs associated with this. It is understood between the parties this clause does not apply to sales staff who have completed the Course after January 1, 2009, or who are otherwise required to do so pursuant to the Act.
5. The Dealer and Anderson agree to comply with the Act and Standards of Business Practice, as may be amended from time to time.

Ontario Motor Vehicle Industry Council
Discipline Committee



Paul Burroughs, Chair

