

DISCIPLINE DECISION

REVIEWING PANEL: Sherry Darvish, Discipline Tribunal Chair, Public Member
Nelson Caetano, Registrant
Chris Pinelli, Registrant

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 :

ONTARIO MOTOR VEHICLE)
INDUSTRY COUNCIL)

- and -)

1310104 ONTARIO INC.)
o/a HAWKESBURY HYUNDAI)

- and -)

KEVIN ASSALY)
)

This matter proceeded by way of Rule 1.07 of the Rules of Practice before the Discipline Tribunal and the Appeals Tribunal. This Reviewing Panel has reviewed and considered written materials from the Parties together with a waiver of the requirement for an oral hearing and hereby makes the following Order:

Date of Decision: February 12, 2025

Findings: **1310104 Ontario Inc. o/a Hawkesbury Hyundai has breached the following:**

- Sections (2) and 9(3) of the Code of Ethics, O. Reg. 332/08

Kevin Assaly has breached the following:

- Sections 6(2) and 9(3) of the Code of Ethics, O. Reg. 332/08

Order:

1. 1310104 Ontario Inc. o/a Hawkesbury Hyundai (the "Dealer") shall pay a fine in the amount of **\$5,000** no later than ninety (90) calendar days from the date of the Discipline Tribunal's Order.
2. Kevin Assaly shall pay a fine in the amount of **\$500** no later than ninety (90) calendar days from the date of the Discipline Tribunal's Order.
3. The Dealer shall offer to all current and future salespersons, employed by the Dealer, to fund their completion of the MVDA Key Elements Course, no later than ninety (90) calendar days from the date of the Discipline Tribunal's Order.

Overview

This matter proceeded on the basis of an Agreed Statement of Facts, dated December 5, 2024, a jointly proposed disposition and a waiver of oral hearing, pursuant to Rule 1.07 of the Rules of Practice before the Discipline Tribunal and the Appeals Tribunal. The Agreed Statement of Facts states in relevant part as follows:

Withdrawals:

1. The allegations contained in paragraphs 6 and 7 of the Notice of Referral to Discipline dated October 25, 2024, are hereby withdrawn.

Background:

2. 1310104 Ontario Inc. o/a Hawkesbury Hyundai (the "Dealer") was first registered as a motor vehicle dealer under the Act in or around October 1998.
3. Kevin Assaly ("Assaly") was first registered as a salesperson under the Act in or around July 1999. At all material times, Assaly has been the General Manager and Person in Charge of the day-to-day activities of the Dealer. As the Person in Charge, Assaly was assigned primary responsibility for and agreed to be accountable for compliance with the Act and Regulations thereunder.

OMVIC Registrant Education re: All-in Pricing:

4. Since the Act was proclaimed in 2010, OMVIC has issued various educational materials, including publications, webinars, and guidelines, reminding registrants of their all-in pricing obligations. The dates of said publications are attached hereto as Schedule "A". Educational materials continue to be available on OMVIC's website.

Dealer's Non-Compliance:

5. On or before August 23, 2023, the Dealer sold a 2023 Hyundai Tucson stock# 24237 (VIN ***113867), to a consumer for \$44,206.51, which was \$1,832.51 over the advertised price.
6. On or before July 4, 2023, the Dealer sold a 2023 Hyundai Palisade stock #24266 (VIN ***605453) to a consumer for \$56,169, which was \$645 over the advertised price.

7. As a result, the Dealer's advertised vehicle price was not all-inclusive. This is contrary to section 36(7) of O. Reg. 333/08, as well as section 4(2) and 9(3) of the Code of Ethics.

Assaly's Non-Compliance:

8. Assaly, as a Person in Charge, failed to ensure that the Dealer conducted its business in compliance with the Act, its regulations, and the Code of Ethics and thus personally contravened sections 6(2) and 9(3) of the Code of Ethics.
9. As particularized above, the Dealer has violated the following section of the Code of Ethics:

Disclosure and marketing

s. 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.

10. As particularized above, the Dealer and Assaly have violated the following section of the Code of Ethics:

Professionalism

s. 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.

11. As particularized above, Nazir have violated the following section of the Code of Ethics:

Accountability

s. 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.

Decision of the Reviewing Panel

Having reviewed and considered the Agreed Statement of Facts and written submissions provided by the Parties, the Reviewing Panel is satisfied that the evidence contained in the Agreed Statement of Facts substantiates the allegations that: (1) the Dealer has breached subsections 4(2) and 9(3) of the OMVIC Code of Ethics; (2) Assaly has breached subsections 6(2) and 9(3) of the OMVIC Code of Ethics.

The Reviewing Panel accepted the parties' proposed resolution for the reasons below.

Reasons for Decision

The Reviewing Panel received and considered comprehensive written materials from the parties and was left satisfied that the proposed resolution has no risk of being contrary to the public interest. The outcome is clearly connected to the admitted

breaches of the Code of Ethics and consistent with other outcomes ordered in this Tribunal in similar cases. In such circumstances, disposition under Rule 1.07 is appropriate and ordered accordingly.

Ontario Motor Vehicle Industry Council
Discipline Tribunal

Dated: February 12, 2025

S. Darvish

Sherry Darvish, Discipline Tribunal Chair,
Public member
On behalf of:

Nelson Caetano, Registrant
Chris Pinelli, Registrant

