

## 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 -

1809231 ONTARIO INC. o/a DIXIE MITSUBISHI

- AND -

CHRISTOPHER KEDZIERSKI

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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:** March 5, 2015

**Findings:** Breach of Sections 4 and 9 of the Code of Ethics

**Order:**

1. The Dealer is ordered to pay a fine in the amount of \$2,000 within 90 days of the date of the Discipline Committee Order.
2. Kedzierski is ordered 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 is ordered to offer all current and future sales staff the opportunity to complete the course. Current 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 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 or who are otherwise required to do pursuant to the Act.
4. The Dealer and Kedzierski shall 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. 1809231 Ontario Limited o/a Dixie Mitsubishi, the ("Dealer") was first registered as a motor vehicle dealer in or around November 2009. Christopher Kedzierski ("Kedzierski") was first registered as a motor vehicle salesperson in or around August 2009. At all material times, Kedzierski was the General Manager of the dealer.
2. In the winter of 2008, OMVIC issued a Dealer Standard publication which highlighted some of the upcoming changes that would take place when the *Motor Vehicle Dealers Act, 2002* ("the Act") came into effect. Included in the bulletin was the requirement for Dealers to disclose former daily rental vehicles in advertisements.
3. Once the Act came into effect, the following Dealer Standard publications further reminded dealers of the requirement to disclose former daily rental vehicles in the advertisements:
  - a. Winter 2008
  - b. Fall 2008
  - c. Spring 2010
  - d. Summer 2010
  - e. Spring 2011
  - f. Fall 2013
4. On or about November 12, 2009, Terms and Conditions of registration were signed on behalf of the Dealer, attached hereto as Schedule A. As per condition 7, the dealer agreed to comply with the Code of Ethics and Standards of Business Practice as may be amended from time to time.
5. On or before September 11, 2014, an advertisement was placed by or on behalf of the Dealer for a 2013 Mitsubishi Lancer, stock #P0935 with an advertised selling price of \$16,888. On or about September 11, 2014, representatives of the Registrar attended the Dealer while posing as members of the public. The Dealer then attempted to sell this vehicle without disclosing its former daily rental use in the advertisement. This is contrary to sub section 36(5) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics.



By failing to comply with the following sections of the *Motor Vehicle Dealers Act, 2002*:

Regulation 333/08:

36 (5) If any of the following is true of a motor vehicle, an advertisement that attempts to induce a trade in the specific vehicle shall indicate, in a clear, comprehensible and prominent manner, that the vehicle was previously,

- (a) leased on a daily basis, unless the vehicle was subsequently owned by a person who was not a registered motor vehicle dealer;
- (b) used as a police cruiser or used to provide emergency services; or
- (c) used as a taxi or limousine. O. Reg. 333/08, s.36 (5)

It is thereby agreed that the Dealer has 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 with those vehicles.

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 \$2,000 within 90 days of the date of the Discipline Committee Order.
2. Kedzierski 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 current and future sales staff the opportunity to complete the course. Current 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 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 or who are otherwise required to do pursuant to the Act.
4. The Dealer and Kedzierski 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 Kedzierski breached subsections 4 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 \$2,000 within 90 days of the date of the Discipline Committee Order.
2. Kedzierski is ordered 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 is ordered to offer all current and future sales staff the opportunity to complete the course. Current 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 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 or who are otherwise required to do pursuant to the Act.
4. The Dealer and Kedzierski shall comply with the Act and Standards of Business Practice, as may be amended from time to time.

Ontario Motor Vehicle Industry Council  
Discipline Committee



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Catherine Poultney, Chair

