

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 -

ANTONIPILLAI MERVIN JOSEPH o/a M & M AUTO SALES

Date of Hearing: July 31, 2023

Date of Decision: August 16, 2023

Findings: Breach of Section 9(2) of the Code of Ethics

Order:

1. Mr. Antonipillai is ordered to pay a fine in the amount of \$3,000. \$1,500 will be paid no later than August 31, 2023, and the remaining balance (\$1,500) will be paid no later than November 30, 2023.
2. Mr. Antonipillai is ordered to successfully complete the Automotive Certification course (the "Course"), no later than November 30, 2023.
3. Mr. Antonipillai 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, 2023. 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 or who are otherwise required to do so pursuant to the Act.
4. Mr. Antonipillai agrees to comply with the Act and Standards of Business Practice, as may be amended from time to time.

Introduction

This hearing was held virtually by video conference. The Registrant, Mervin Joseph Antonipillai, was present and self-represented. OMVIC was represented by Counsel, Zach Kowalsky. Ms. Karen Bernofsky was Independent Legal Counsel (ILC) to the Panel.

Prior to the hearing the parties reached agreement on an Agreed Statement of Facts (ASF) and a Joint Submission on Penalty (JSOP).

Allegations

The allegations in this matter originated in a Notice of Complaint, dated October 12, 2022 (NOC) which was marked as Exhibit 1. Counsel for OMVIC however advised that the NOC had been withdrawn in its entirety and replaced with a Notice of Further and Other Particulars, dated March 7, 2023. Accordingly, the Notice of Further and Other Particulars was marked as Exhibit 2. Counsel for OMVIC further advised that the allegations relating to "Consumer A" in exhibit 2 were also withdrawn.

The Notice of Further and Other Particulars alleges that the Registrant breached s. 9(2) of the OMVIC Code of Ethics, Ontario Regulation 332/08, made under the *Motor Vehicle Dealers Act, 2002*. The unwithdrawn portions are as follows:

The Trade

11. On or about October 8, 2021, Consumer B purchased a 2010 Toyota Highlander (VIN: [redacted]) from Antonipillai.
 12. As part of this trade, Antonipillai supplied Consumer B with an SCC that purported that this vehicle met and satisfied provincial safety standards as prescribed by the *Highway Traffic Act*.
 13. [withdrawn]
 14. On or about October 19, 2021, the consumer took delivery of the vehicle.
 15. On or about October 20, 2021, the consumer contacted one of Antonipillai's salespersons to notify them of issues related to her vehicle, including a "clunking noise". The salesperson advised the consumer to contact Antonipillai to address the concerns.
 16. On or about November 1, 2021, Consumer B spoke with Antonipillai about the issues with the vehicle that she had identified to date. Antonipillai told Consumer B to bring the car to his dealership. The consumer preferred to have the vehicle examined by independent mechanics.
- ### **Defects Identified in the Inspections**
17. On or about November 16, 2021 and November 30, 2021, the consumer brought the vehicle to two separate third-party mechanics for inspections.
 18. During both inspections, the mechanics confirmed defects of (among other things): the battery hold-down, control arms, and muffler.
 19. The November 16, 2021 inspection resulted in the mechanic providing Consumer B with a repair estimate of \$1,727.88 plus HST on or about November 25, 2021.
 20. Following the November 16, 2021 inspection, the consumer contacted Antonipillai and demanded that he either make the necessary repairs to the vehicle or refund her the purchase price and take back the vehicle. Antonipillai requested the consumer to bring the vehicle to his

dealership. Consumer B explained that she did not feel safe to drive the vehicle given the above-mentioned issues.

21. On or about December 8, 2021, the MTO inspected the vehicle. The MTO inspection identified the following defects:
- "Hole in the muffler due to corrosion with an active exhaust leak"
 - "Battery hold down missing"
 - "Lower control arm bushing on both sides extremely worn and have separated from the steel sleeve"
 - "Rear sub frame assembly heavily corroded in several spots with a hole due to corrosion"

22. The MTO report stated that any one of the above-mentioned defects should have resulted in a failed safety inspection.

23. Based on the above-mentioned defects, the MTO found that the vehicle was in "unfit" condition and therefore ordered that the license plates be removed from the vehicle and that it not be operated on public roads.

Antonipillai's Failure to take Responsibility

24. On or about December 1, 2021, the consumer wrote to Antonipillai and again requested that he either repair the vehicle at his expense or take it back and refund her the purchase price.

25. Antonipillai failed to respond to this letter. The consumer then complained to the Registrar about Antonipillai's conduct.

26. Between on or about February 4, 2022 and on or about March 7, 2022, a representative of the Registrar corresponded with Antonipillai in relation to Consumer B's complaint.

Agreed Statement of Facts

The evidence in the proceeding was tendered by way of the ASF which was marked as Exhibit 3 and provides as follows:

Background

1. Antonipillai Mervin Joseph o/a M & M Auto Sales ("Antonipillai") is currently registered as a motor vehicle dealer under the Act. He was originally registered as a dealer on or about November 2, 2000.

The Trade:

2. On or about October 8, 2021, a consumer purchased a 2010 Toyota Highlander (VIN: [redacted]) from Antonipillai.
3. As part of this trade, Antonipillai supplied the consumer with an SCC that purported that this vehicle met and satisfied provincial safety standards as prescribed by the Highway Traffic Act.
4. On or about October 19, 2021, the consumer took delivery of the vehicle.
5. On or about October 20, 2021, the consumer contacted one of Antonipillai's salespersons to notify them of issues related to her vehicle, including a "clunking noise". The salesperson advised the consumer to contact Antonipillai to address the concerns.

6. On or about November 1, 2021, the consumer spoke with Antonipillai about the issues with the vehicle that she had identified to date. Antonipillai told the consumer to bring the car to his dealership. The consumer preferred to have the vehicle examined by independent mechanics.
7. On or about November 16, 2021, and November 30, 2021, the consumer brought the vehicle to two separate third-party mechanics for inspections.
8. During both inspections, the mechanics confirmed defects of (among other things): the battery hold-down, control arms, and muffler.
9. The November 16, 2021, inspection resulted in the mechanic providing the consumer with a repair estimate of \$1,727.88 plus HST on or about November 25, 2021.
10. Following the November 16, 2021, inspection, the consumer contacted Antonipillai and demanded that he either make the necessary repairs to the vehicle or refund her the purchase price and take back the vehicle. Antonipillai requested the consumer to bring the vehicle to his dealership. The consumer explained that she did not feel safe to drive the vehicle given the above-mentioned issues.
11. On or about December 8, 2021, the MTO inspected the vehicle. The MTO inspection identified the following defects:
 - a. "Hole in the muffler due to corrosion with an active exhaust leak"
 - b. "Battery hold down missing"
 - c. "Lower control arm bushing on both sides extremely worn and have separated from the steel sleeve"
 - d. "Rear sub frame assembly heavily corroded in several spots with a hole due to corrosion"
12. The MTO report stated that any one of the above-mentioned defects should have resulted in a failed safety inspection.
13. Based on the above-mentioned defects, the MTO found that the vehicle was in "unfit" condition and therefore ordered that the license plates be removed from the vehicle and that it not be operated on public roads.

Antonipillai's Failure to take Responsibility:

14. On or about December 1, 2021, the consumer wrote to Antonipillai and again requested that he either repair the vehicle at his expense or take it back and refund her the purchase price.
15. Antonipillai failed to respond to this letter. The consumer then complained to the Registrar about Antonipillai's conduct.
16. Between February 4, 2022 and March 7, 2022, a representative of the Registrar corresponded with Antonipillai in relation to the consumer's complaint.
17. During this exchange, Antonipillai refused to provide a refund to the consumer.
18. Antonipillai offered to repair a limited number of the defects identified in the MTO inspection. Further, Antonipillai required that, in order to effect repairs on these limited

items, the consumer would have to make her own arrangements to bring her in operable vehicle to Antonipillai at her own expense. This was not agreeable to the consumers.

Generally:

19. Antonipillai's failure to take responsibility for the consumer's vehicle condition issues represents conduct that is unprofessional and contrary to Section 9 of the Code of Ethics.

Decision of the Panel – Beach of the Code of Ethics

This Panel finds that the Registrant breached s. 9(2) of the Code of Ethics.

Reasons for Decision

At the outset of the proceedings, the Panel arraigned the Registrant. In light of the Registrant's admissions, the Panel conducted a plea inquiry to ensure that the Registrant's admissions in the ASF were voluntary, informed, and unequivocal. The Panel was satisfied that all admissions made by the Registrant were voluntary, informed, and unequivocal.

The Panel was satisfied that the evidence contained in the ASF was sufficient to support a finding of a breach of s. 9(2) of the Code of Ethics as against the Registrant. The ASF confirms that the vehicle at issue was sold with a Safety Standards Certificate. The consumer notified the Registrant the day after taking delivery that they had mechanical concerns with the vehicle. The consumer had two independent mechanical inspections done, both of which identified multiple safety issues. Within approximately six weeks of the sale of the vehicle the Ministry of Transportation of Ontario (MTO) declared the car unfit and ordered the plates removed. The MTO inspection identified 4 different defects, any one of which should have resulted in a failed safety inspection according to their report. The Registrant and the consumer were unable to reach agreement on how to resolve the issue and the consumer reported the issue to OMVIC.

In the course of submissions at the hearing, the Registrant explained that he uses an independent mechanic to conduct safety inspections and he advised that believed at the time that the vehicle was safe. However, he accepted that he was in breach of s. 9(2) of the Code of Ethics and advised that he did not deny the allegations.

Having reviewed and considered the ASF, the Panel concluded that the Dealer breached Section 9(2) of the OMVIC Code of Ethics. While the Registrant uses an external mechanic to conduct the safety inspections on his vehicles, he is ultimately responsible for the state of the vehicle as it leaves his lot. The ASF supports the Registrar's position that the Registrant failed to carry on business with at least one of integrity, honesty, or fairness.

Decision on Penalty

As above, the Panel was presented with a JSOP on behalf of the parties. The JSOP was submitted and entered as Exhibit 4 in the course of the penalty phase of the hearing and provides as follows:

1. Mr. Antonipillai is ordered to pay a fine in the amount of \$3,000. \$1,500 will be paid no later than August 31, 2023, and the remaining balance (\$1,500) will be paid no later than November 30, 2023.

2. Mr. Antonipillai is ordered to successfully complete the Automotive Certification course (the "Course"), no later than November 30, 2023.
3. Mr. Antonipillai 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, 2023**. 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 or who are otherwise required to do so pursuant to the Act.
4. Mr. Antonipillai agrees to comply with the Act and Standards of Business Practice, as may be amended from time to time.

The Panel accepted the JSOP and made an order consistent with its terms before the conclusion of the hearing.

Reasons for Decision on Penalty

In its totality, the JSOP is a reasonable and appropriate outcome given the facts of this matter.

The Panel is satisfied that the JSOP meets the objectives of an appropriate penalty. The Registrant has been in business for 22 years without any disciplinary history. The fine ordered is reasonable in light of the fact that this was the Registrant's first breach of the Code of Ethics and the quantum is not inconsistent with other decisions of this tribunal that were provided by OMVIC's counsel. The Automotive Certification Course serves the additional objectives of potential rehabilitation for the Registrant as well as public protection.

The JSOP is also not contrary to the public interest, and it will not undermine the publicly perceived integrity of this tribunal. A joint submission on penalty must not be rejected unless it is so unhinged from the circumstances of the offence and offenders that its acceptance would lead a reasonable and informed person, aware of all the circumstances and the importance of promoting certainty in resolution discussions, to believe that the proper of the functioning of the justice system had broken down. A joint submission must be treated as an all or nothing "total package" considering mitigating and aggravating factors while also being mindful of the range of penalties found in other similar matters. The Panel had no reason to reject the JSOP in this matter.

The Panel thanks the parties and counsel for their helpful materials and submissions.

Ontario Motor Vehicle Industry Council
Discipline Committee



Deb Mattina, Chair
Paul Burroughs, Vice Chair
Stuart Sherman, Vice Chair