

**DISCIPLINE COMMITTEE
OF THE ONTARIO MOTOR VEHICLE INDUSTRY COUNCIL**

PANEL:	Mr. Robert MacKay, Chair	Public Member
	Mr. Neil Joosse, Vice-Chair	Registrant
	Mr. John Kenny, Vice-Chair	Registrant

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 :

Appearances¹:

**REGISTRAR, MOTOR VEHICLE
DEALERS ACT, 2002**

Mr. Michael Rusek
for the Registrar

- and -

**BRAMPTON AUTO SERVICE &
USED CARS INC.**

Self-represented

and
WASIF MIR

and
TAYYEB MIR

and
ASAD MIR

Heard: December 19, 2014

¹ Also present at the hearing were: Mr. Aaron Dantowitz and Mr. Justin Safayeni - Independent Legal Counsel to the Panel, Ms. Andrea Korth - Business Standards Coordinator OMVIC, and Ms. Sarah Melse - Court Reporter

Findings:

Breaches of section 42 of Ontario Regulation 333/08, and sections 7 and 9 of the Code of Ethics

Order:

1. Brampton Auto Service & Used Cars Inc. (the "Dealer") shall pay a fine in the amount of \$10,000. \$2,000 is due within thirty (30) days of the date of the Discipline Committee Order, and the remaining balance is due on or before February 15, 2016. If extension is required, an application can be made to the Discipline Committee.
2. Asad Mir shall successfully complete the OMVIC certification course offered by Georgian College within seven (7) months of the date of the Discipline Committee Order. The Dealer will incur all costs associated with this requirement.
3. The Dealer and Asad Mir shall comply with the Code of Ethics and Standards of Business Practice, as may be amended from time to time.

DECISION AND REASONS

Introduction

This matter proceeded before a panel of the Discipline Committee (the "Panel") pursuant to section 17 of the *Motor Vehicle Dealers Act, 2002*, S.O. 2002, c. 30, Schedule B.

The Registrar of the Ontario Motor Vehicle Council ("OMVIC") was represented by Michael Rusek, and the dealer and registrants were self-represented, with Asad Mir appearing for the Dealer and Wasif Mir, Tayyeba Mir and Asad Mir appearing on their own behalf. Aaron Dantowitz and Justin Safayeni attended as Independent Legal Counsel ("ILC") to the Panel.

The Panel received the following documents, which were accepted and marked as:

- Exhibit 1: the Notice of Complaint and the Notice of Further and Other Particulars;
- Exhibit 2: the Agreed Statement of Facts; and
- Exhibit 3: the Joint Statement on Penalty.

The Agreed Statement of Facts, Exhibit 2, sets out as follows:

FACTS

1. Brampton Auto Service & Used Cars Inc. (the "Dealer") was first registered as a motor vehicle dealer in or around August 2002.
2. Asad Mir ("Asad") was first registered as a motor vehicle sales person in or around March 2006. At all material times, Asad was the director of the corporation and person in charge of the Dealer.
3. In the spring of 2003, OMVIC issued a Dealer Standard publication which informed dealers of the requirement for written disclosure of accident damage on contracts.
4. In the summer of 2003, OMVIC issued a Dealer Standard publication which provided an overview of OMVIC's discipline process. This overview included recent discipline matters which included non-disclosure of accident repair.
5. In the summer of 2006, OMVIC issued a Dealer Standard publication which highlighted recent LAT decisions. This issue included a LAT decision which resulted in the revocation of a dealership for non-disclosure of material facts on contracts (amongst other violations)
6. On or about July 12, 2007, LAT issued a Consent Order, pursuant to a negotiated resolution regarding the Proposal to suspend the registration of the Applicants, Brampton Auto Sales & Used Car Sale Inc, Mr. Rehmutallah Mir. Attached hereto as Schedule "A" is a copy of the Order.
 - a. The Dealer and Mir will comply with OMVIC's Code of Ethics and Standards of Business Practice as may be amended from time to time.
7. In the winter of 2007, OMVIC issued a Dealer Standard publication which highlighted conduct that could result in a proposal to revoke registration. Conduct that was listed included non-disclosure of prior accident/ salvage on contracts (amongst other violations).
8. In or around December 2008, OMVIC issued a bulletin reminding dealers of the new disclosure obligations under the new *Act, 2002*, which included: if a vehicle was involved in a collision or incident and suffered more than \$3,000 in damage, and if there has been any structural damage, repairs or alterations to a vehicle (amongst other disclosures).
9. In the winter of 2008, OMVIC issued a Dealer Standard publication which highlighted disclosure obligations under the new *Act, 2002*, this included: if a

vehicle was involved in a collision or incident and suffered more than \$3,000 in damage, and if there was been any structural damage, repairs or alterations to a vehicle (amongst other disclosures).

10. In the summer of 2011, OMVIC issued a Dealer Standard publication which reminded dealers to disclose incidents that have caused \$3,000 or more in damage.
11. In or around January 2012, the Dealer purchased a 2001 Pontiac Grand Am (VIN 1G2NF12EX1M510454). This vehicle is accident repaired. On or about February 15, 2012, the Dealer sold this vehicle without providing the purchaser with written disclosure of the vehicle's accident repair history in the amount of \$5,262. This is contrary to section 42(19) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics.
12. In or around April 2012, the Dealer purchased a 2001 Chevrolet Blazer 4x4 (VIN 1GNCT18W31K165394). This vehicle is accident repaired. On or about May 15, 2012, the Dealer sold this vehicle without providing the purchaser with written disclosure of the vehicle's accident repair history in the amount of \$8,785. 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 June 1, 2012, LAT issued a Consent Order, pursuant to a negotiated resolution regarding the Proposal to suspend the registration of the Applicants, Brampton Auto Sales & Used Car Sale Inc, Mr. Rehmatullah Mir and Mr. Asad Mir. Attached hereto as Schedule "B" is a copy of the Order. The Order required,
 - a. The Dealer, Asad and Rehmatullah agree that they are under a positive obligation to disclose in writing on the bill of sales all material facts about the vehicles sold or leased to the Dealer's customers, whether or not the Dealer, Asad or Rehmatullah agree with the disclosure and whether or not the vehicle has been branded through the Ministry of Transportation. Material facts include but are not limited to, disclosure of salvage, previous salvage, accidented and repaired, frame damage, theft recovery, unibody damage, previous taxi cab, previous police car, previous daily rental, previous limousine, emergency services vehicles, insurance write-off and any other material fact which, in the Registrar's opinion may affect one's decision to purchase or lease the vehicle. In the case of damaged vehicles, the Dealer, Asad and Rehmatullah further agree to disclose as much detail as possible with respect to the nature and severity of damage. The Dealer agrees to make reasonable efforts to ensure all material facts are disclosed.
 - b. The Dealer and Asad agree that, should any information come to light, which the Registrar deems to be a material fact concerning a vehicle the Dealer has sold, whether or not the Dealer or Asad agrees with the disclosure and whether or not the vehicle has been branded through the Ministry of Transportation, the Dealer will comply with all reasonable requests made by the Registrar to provide compensation to the purchaser.
 - c. Without limiting the generality of the foregoing, the Dealer, Asad and Rehmatullah will ensure that all trades in motor vehicles are completed in accordance with sections 39,40,41,42 and 43 of Ontario Regulation

333/08 where applicable and that any dealer-to-dealer trades met the disclosure requirements set out in section 4 of the Code of Ethics.

14. In the summer of 2012, OMVIC issued a Dealer Standard publication which highlighted failure to disclose accident damage on contracts, as a Problematic Trend amongst dealers. This issue further explained that dealers are responsible for providing proper disclosure, and that OMVIC staff will be demonstrating a zero-tolerance policy on this issue.
15. In or around January, 2012, the Dealer purchased a 2002 Pontiac Montana (VIN 1GMDX03E12D242050). This vehicle has structural damage. On or about August 29, 2012, the Dealer sold this vehicle without providing the purchaser with written disclosure of the vehicle's structural damage history. This is contrary section 42(10) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics.
16. In or around September, 2012, OMVIC issued a bulletin reminding dealers that all required disclosures must be written on the contract in a Clear, Comprehensible and Prominent (CCP) manner.
17. In or around August 2012, the Dealer purchased a 1998 Subaru Legacy (VIN 4S3BK25XW7315259). This vehicle was previously stolen. On or about September 9, 2012, the Dealer sold this vehicle without providing the purchaser with written disclosure that the vehicle was previously stolen. This is contrary to section 42(24) of Regulation 333/08, as well as sections 7 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:

42 (10) If there has been structural damage to the motor vehicle or any repairs, replacements or alterations to the structure of the vehicle, a statement to that effect.

42 (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.

42 (24) If the motor vehicle had been recovered after being reported stolen, a statement to that effect.

It is thereby agreed that the Dealer and Asad Mir have breached the following sections of the Code of Ethics, as set out in Regulation 332/08:

7. 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.

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

The Agreed Statement of Facts mirrors the allegations in the Notice of Complaint and Notice of Further and Other Particulars, except that the Panel was advised by counsel to the Registrar that all allegations against Wasif Mir and Tayyeba Mir were being withdrawn, and only the allegations against the Dealer and Asad Mir were being pursued.

Decision of the Panel:

A plea inquiry was conducted by the Panel Chair. At the conclusion of that process, the Panel was satisfied that the Mr. Asad Mir's admissions on behalf of the Dealer and himself were voluntary, informed and unequivocal. Having reviewed and considered the admissions of the Dealer and Asad Mir contained in the Agreed Statement of Facts, the Panel of the Discipline Committee hereby concludes that the Dealer and Asad Mir have breached section 42 of the Regulation 333/08 made under the *Motor Vehicle Dealers Act, 2002*, and sections 7 and 9 of the Code of Ethics as set out in Regulation 332/08 made under the *Motor Vehicle Dealers Act, 2002*.

Reasons for Decision:

The Panel heard submission by Michael Rusek on behalf of OMVIC and Asad Mir on behalf of the Dealer and himself with respect to the Agreed Statement of Facts. In addition, the Panel reminded itself that the Agreed Statement of Facts constituted the evidence at this hearing. In reaching its decision, the Panel relied exclusively on the evidence presented at the Hearing as contained in the Agreed Statement of Facts,

Exhibit 2. Consequently, the Panel is satisfied that the facts as they appear in the statement represent a violation of sections 7 and 9 of the Code of Ethics.

As noted in the Agreed Statement of Facts, the relevant portions of section 42 of Regulation 333/08 made under the *Motor Vehicle Dealers Act, 2002* provide:

42 (10) If there has been structural damage to the motor vehicle or any repairs, replacements or alterations to the structure of the vehicle, a statement to that effect.

42 (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.

42 (24) If the motor vehicle had been recovered after being reported stolen, a statement to that effect.

Section 7 of the Code of Ethics provides:

7. 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.

Section 9 of the Code of Ethics provides:

9. In carrying on business, a registrant shall not engage in any act or omission that, having regard to all circumstances, would reasonably be regarded as disgraceful, dishonourable, unprofessional or unbecoming of a registrant.

The Panel considered the facts in the Agreed Statement of Facts that demonstrate OMVIC's general communications to all Registrants and specific communication to this Dealer with respect to rules governing Registrants. Mr. Asad Mir knew or ought to have known his actions were contrary to sections of the Code of Ethics.

Specifically the Panel found the admissions in the Agreed Statement of Facts at paragraphs 11, 12, 15, and 17, amount to a violation of sections 7 and 9 of the Code of Ethics. The Panel accepted that the facts represented conduct that would reasonably be regarded as disgraceful, dishonourable, unprofessional or unbecoming of a registrant.

Submissions on Penalty

Counsel for OMVIC advised the Panel that a Joint Submission as to Penalty had been agreed upon. The Joint Submission was entered as Exhibit 3. Mr. Rusek and Mr. Asad Mir made submissions in support of the Joint Submission. In addition, the Panel sought and obtained advice from its independent legal counsel, who reminded the Panel of the applicable principles concerning the approach that Discipline panels should take when joint submissions are placed before them.

The Joint Submission invited the Panel to consider the following:

Brampton Auto Service & Used Cars Inc. and Asad Mir have agreed to the following:

1. Brampton Auto Service & Used Cars Inc. (the "Dealer") agrees to pay a fine in the amount of \$10,000. \$2,000 is due within thirty (30) days of the date of the Discipline Committee Order, and the remaining balance is due on or before February 15, 2016. If extension is required, an application can be made to the Discipline Committee.
2. Asad Mir agrees to successfully complete the OMVIC certification course offered by Georgian College within seven (7) months of the date of the Discipline Committee Order. The Dealer will incur all costs associated with this.
3. The Dealer and Asad Mir agree to comply with the Code of Ethics and Standards of Business Practice, as may be amended from time to time.

Decision on Penalty

Having reviewed and considered the Joint Submission on Penalty, the Panel of the Discipline Committee accepts the Joint Submission and hereby orders that:

1. Brampton Auto Service & Used Cars Inc. (the "Dealer") shall pay a fine in the amount of \$10,000. \$2,000 is due within thirty (30) days of the date of the Discipline Committee Order, and the remaining balance is due on or before February 15, 2016. If extension is required, an application can be made to the Discipline Committee.
2. Asad Mir shall successfully complete the OMVIC certification course offered by Georgian College within seven (7) months of the date of the Discipline Committee Order. The Dealer will incur all costs associated with this requirement.
3. The Dealer and Asad Mir shall comply with the Code of Ethics and Standards of Business Practice, as may be amended from time to time.

Reasons for Penalty:

Following the oral and written submissions from the parties and advice from ILC the Panel recessed to consider the issue of penalty.


During its deliberations the Panel considered the fact that this Dealer had previously had a Consent Order issued by OMVIC's License Appeal Tribunal in relation to compliance with OMVIC's Code of Ethics, and Standards of Business Practice in July of 2007. And, in June of 2012 a Consent Order was issued to the Dealer and Asad Mir with respect to their obligations to disclose all material facts about vehicles sold. Having found breaches of a similar nature at this Hearing was a factor in deciding penalty in this case. The Panel is well aware of its responsibility to mete out a penalty that has a specific deterrent effect to assist the Dealer in rehabilitation.

In reviewing the two cases² referred to by Mr. Rusek in the course of his submission the Panel noted that the fine being proposed by the parties is fair and within the normal range one would expect in these circumstances. It is however on the harsher side of the ledger. This assisted the Panel in its decision to accept the Joint Submission on Penalty as it supports the necessity for a specific deterrent to this Registrant in mediating his behavior in the future whilst it serves to protect the public.

The penalty proposed is consistent with what the Panel felt would also be a general deterrent to OMVIC registrants. Therefore the Panel was able to conclude the Joint Submission on Penalty, Exhibit 3, is appropriate in the circumstances of this case.

² OMVIC v. Badanai Motors LTD and George Badanai
OMVIC v. Mohamed Ezzedine Naasani

I, Robert MacKay, sign this decision and reasons for the decision as Chair of this Discipline Panel and on behalf of the members of the Discipline Panel as listed below.



Mr. Robert MacKay, Chair

Date: January 21, 2015

Panel Members:
Mr. Robert MacKay
Mr. Neil Josse
Mr. John Kenny