

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

BETWEEN:

REGISTRAR, *MOTOR VEHICLE DEALERS ACT, 2002*

- AND -

POLITO FORD LINCOLN SALES LTD.

- AND -

ANTHONY POLITO

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 24, 2015

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

Order:

1. The Dealer is ordered to pay a fine in the amount of \$4,500 within 90 days of the date of the Discipline Committee Order.
2. 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 the date of the Discipline Committee Order. 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 after January 1, 2009, or who are otherwise required to do so pursuant to the Act.
3. The Dealer and Polito 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. Polito Ford Lincoln Sales Ltd. (the "Dealer") was first registered as a motor vehicle dealer in or around April 1991. Anthony Polito ("Polito") was first registered as a motor vehicle salesperson in or around June 1985. At all material times Polito was the sole owner and director of the Dealer.
2. During an inspection on or about March 5, 2012, a representative of the Registrar reminded the Dealer of the requirement to advertise the all-in price of a vehicle. In addition to this, the Dealer was also reminded to provide purchasers with written disclosure on the bill of sale of a vehicle's former daily rental history.
3. During an inspection on or about December 9, 2014, a representative of the Registrar ~~discovered the following non-compliant vehicle trades:~~
4. On or about February 6, 2014 the Dealer, purchased a 2013 Ford Fusion, (VIN 3FA6P0D98DR333010) declared as having been a previous daily rental vehicle. On or about March 3, 2014, the Dealer sold this vehicle without providing the purchaser with written disclosure of the vehicle's previous daily rental history. This is contrary to sections 42(7) and 42(25) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. The Dealer has since provided OMVIC with confirmation from the purchaser that they were aware of their vehicle history at the time of purchase.
5. On or before November 27, 2014, an advertisement was placed by or on behalf of the Dealer for a 2014 Ford F-150, Stock #140496, with a selling price of \$52,159. On or about November 27, 2014 the dealer sold this vehicle and charged \$393 in additional fees. As such, the advertised price was not all inclusive, contrary to section 36(7) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics. The Dealer has since refunded the purchaser of this vehicle the amount they were charged in additional fees.
6. On or before November 29, 2014, an advertisement was placed by or on behalf of the Dealer for a 2013 Ford F-150, Stock#140310A, with a selling price of \$19,995.00. On or about November 29, 2014 the dealer sold this vehicle and charged \$304.00 in additional fees. As such, the advertised price was not all inclusive, contrary to section 36(7) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics. The Dealer has since refunded the purchaser of this vehicle the amount they were charged in additional fees.



7. The Dealer has since agreed to ensure both the New and Used Car Sales Managers successfully complete the OMVIC certification course within 90 days of the date of the Discipline Committee Order.

By failing to comply with the following:

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.

42. Additional information in contracts of sale and leases:

7. If any of the following is true of the motor vehicle, a statement to the effect that the vehicle was previously,

i. leased on a daily basis, unless the vehicle was subsequently owned by a person who was not registered as a motor vehicle dealer under the Motor Vehicle Dealers Act or the Motor Vehicle Dealers Act, 2002,

ii. used as a police cruiser or used to provide emergency services, or

iii. used as a taxi or limousine.

25. Any other fact about the motor vehicle that, if disclosed, could reasonably be expected to influence the decision of a reasonable purchaser or lessee to buy or lease the vehicle on the terms of the purchase or lease.

It is thereby agreed that the Dealer and Polito have 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.

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.

Joint Submission on Penalty

1. The Dealer is ordered to pay a fine in the amount of \$4,500 within 90 days of the date of the Discipline Committee Order.
2. 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 the date of the Discipline Committee Order. 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 after January 1, 2009, or who are otherwise required to do so pursuant to the Act.
3. The Dealer and Polito shall 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 Polito breached subsections 4, 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 \$4,500 within 90 days of the date of the Discipline Committee Order.
2. 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 the date of the Discipline Committee Order. 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 after January 1, 2009, or who are otherwise required to do so pursuant to the Act.
3. The Dealer and Polito 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



Catherine Poultney, Chair

