

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 -

2343654 ONTARIO INC. o/a 401 DIXIE NISSAN/401-DIXIE INFINITI

- AND -

SOHAIL IQBAL

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: February 12, 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 \$6,000.00 within 90 days of the date of the Discipline Committee Order.
2. Iqbal 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 Iqbal 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. 2343654 Ontario Inc. o/a 401 Dixie Nissan/401-Dixie Infiniti, the ("Dealer") was first registered as a motor vehicle dealer on or about November 2, 2012. Sohail Iqbal ("Iqbal") was first registered as a motor vehicle salesperson on or about December 22, 2008. At all material times, Iqbal was a General Manager of the Dealer.
2. On or about October 29, 2012, the Dealer executed Terms and Conditions of registration. As per condition 6, the Dealer agreed to comply with Ontario Regulation 332/08 under the Motor Vehicle Dealers Act, 2002 and the Code of Ethics. Furthermore as per condition 24, the Dealer agreed to disclose in writing on the bill of sale all material facts including but not limited to previous daily rentals.
3. On or about February 3, 2014 OMVIC issued a Notice of Complaint ("Notice") against the Dealer, regarding non compliance of section 9 of the Code of Ethics, along with other issues.
4. On or about July 16, 2014, the above mentioned Notice was settled, pursuant to a negotiated resolution. As per condition 6, the Dealer, agreed to comply with the Code of Ethics and Standards of Business Practice.
5. 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, including the requirement for dealers to advertise an all-inclusive vehicle price.
6. Once the Act came into effect, the following Dealer Standard publications further reminded dealers of various advertising obligations including ensuring advertised vehicle prices include all additional fees as well as ensuring to disclose former daily rental vehicles in advertisements:
 - a. Winter 2008
 - b. Summer 2008
 - c. Spring 2010
 - d. Summer 2010
 - e. Spring 2011
 - f. Summer 2012

- g. Winter 2013
- h. Spring 2013
- i. Fall 2013
- j. Winter 2014

7. Furthermore, OMVIC issued the following bulletins which also reminded dealers of the requirement to advertise an all-inclusive price as well as ensuring to disclose former daily rental vehicles:

- a. January 2010 (2 separate publications)
- b. March 2010
- c. April 2010 (2 separate publications)
- d. December 2010
- e. February 2012
- f. August 2012
- g. September 2012 (2 separate publications)
- h. April 2013
- i. June 2014

All-Inclusive Pricing:

8. On or about June 7, 2014, a consumer attended the Dealer to view a white 2014 Nissan Altima that she had seen advertised for \$24,000. The Dealer then sold this vehicle (stock #B5892 VIN 1N4AL3AP1EN221177) to the consumer for \$600.00 above the advertised selling price, by adding a mandatory \$599.00 Platinum Protection Security fee and a mandatory \$5.00 OMVIC fee. On or before July 28, 2014 representatives of the Registrar found that an advertisement was placed by or on behalf of the Dealer for this same vehicle with an advertised selling price of \$24,000. As such the advertised vehicle selling price was not all-inclusive. This is contrary to sub section 36(7) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics. Furthermore, the Dealer failed to disclose that the vehicle is a former daily rental 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.
9. On or before July 8, 2014, an advertisement was placed by or on behalf of the Dealer for a 2012 Nissan Altima Sedan stock# B5906 with an advertised selling price of \$15,500. On July 8, 2014, representatives of the registrar attended the Dealer while posing as members of the public. At this time the vehicle was advertised on the lot with a selling price of \$15,900. The Dealer then attempted to sell this vehicle above the advertised selling price by adding a mandatory \$5.00 OMVIC fee and agreeing to waive the mandatory administration fee. As such the vehicle selling price would not be all-inclusive. This is contrary to sub section 36(7) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics.

Daily Rental Disclosure:

10. On or about May 8, 2014, the Dealer purchased a 2014 Nissan Altima (VIN 1N4AL3AP1EN221177), declared as a former daily rental vehicle. On or about June 7, 2014, the Dealer sold this vehicle without providing the consumer with the required

written disclosure of the vehicle's former daily rental use. This is contrary to sub section 42(7) of regulation 333/08, as well as section 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:

36 (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 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. O. Reg. 333/08, s. 36 (7).

42 (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 taxi or limousine.

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.

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 agrees to pay a fine in the amount of \$6,000.00 within 90 days of the date of the Discipline Committee Order.
2. Iqbal 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 Iqbal 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 Iqbal 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 \$6,000.00 within 90 days of the date of the Discipline Committee Order.
2. Iqbal 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 Iqbal 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