

DISCIPLINE DECISION

REVIEWING PANEL: Sherry Darvish, Discipline Tribunal Chair, Public Member
Nelson Caetano, Registrant
Chris Pinelli, Registrant

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 :

ONTARIO MOTOR VEHICLE)
INDUSTRY COUNCIL)
- and -)
GUELPH-S, LP o/a PFAFF SUBARU)
- and -)
TAYLOR ZACHARY SMITH)
)
)
)

This matter proceeded by way of Rule 1.07 of the Rules of Practice before the Discipline Tribunal and the Appeals Tribunal. This Reviewing Panel has reviewed and considered written materials from the Parties together with a waiver of the requirement for an oral hearing and hereby makes the following Order:

Date of Decision: February 11, 2025

Findings: Guelph-S, LP o/a Pfaff Subaru has breached the following:

- Sections 4(2) and 9(3) of the Code of Ethics, O. Reg. 332/08

Taylor Zachary Smith has breached the following:

- Sections 6(2) and 9(3) of the Code of Ethics, O. Reg. 332/08

Order:

1. Guelph-S, LP o/a Pfaff Subaru (the “Dealer”) shall pay a fine in the amount of **\$3,000** no later than ninety (90) calendar days from the date of the Discipline Tribunal’s Order.
2. Taylor Zachary Smith (“Smith”), as a Person in Charge of the day-to-day activities of the Dealer at all material times, shall successfully complete the MVDA Key Elements Course no later than ninety (90) calendar days from the date of the Discipline Tribunal’s Order.
3. The Dealer shall **offer** to all current and future salespersons, employed by the Dealer, to **fund** their completion of the Automotive Certification Course, no later than ninety (90) calendar days from the date of the Discipline Tribunal’s Order.

Overview

This matter proceeded on the basis of an Agreed Statement of Facts, dated November 26, 2024, a jointly proposed disposition and a waiver of oral hearing, pursuant to Rule 1.07 of the Rules of Practice before the Discipline Tribunal and the Appeals Tribunal. The Agreed Statement of Facts states in relevant part as follows:

The allegations against Daniel Harold Russman contained in paragraphs 2 and 12 of the Notice of Complaint (“NOC”) dated March 1, 2024 are hereby withdrawn.

Amendment:

1. The NOC is amended to reflect that the Ontario Motor Vehicle Industry Council (“OMVIC”) replaces the Registrar, *Motor Vehicle Dealers Act, 2002* as a party to this proceeding.

Background:

2. Guelph-S, LP o/a Pfaff Subaru (the “Dealer”) was first registered as a motor vehicle dealer in and around August 2021.
3. Taylor Zachary Smith (“Smith”) was first registered as a salesperson in and around August 2004. At all material times, Smith has been a General Manager and a Person in Charge of the day-to-day activities of the Dealer.

OMVIC Publications:

4. Since the *Motor Vehicle Dealers Act, 2002* (the “Act”) was proclaimed in 2010, OMVIC has issued various educational materials, including publications, webinars and guidelines, reminding registrants of their all-in pricing obligations. The dates of said publications are attached hereto as Schedule “A”. Educational materials continue to be available on OMVIC’s website.

Prior OMVIC Caution Letter:

5. On or about November 3, 2022, OMVIC sent a caution letter to the Dealer to remind the Dealer and staff of the Dealer's all-in pricing obligations pursuant to section 36 of O. Reg. 333/08.

Dealer's Non-Compliance:

6. On or before February 15, 2023, the Dealer published an advertisement for a 2020 Subaru Ascent Limited, stock# SU0861 (VIN# *430750), with an advertised price of \$37,600 plus taxes and licensing.
7. On or about February 16, 2023, an OMVIC Representative made inquiries about the vehicle, while posing as a member of the public (also known as a mystery shop).
8. A salesperson, acting on behalf of the Dealer, provided the OMVIC Representative with a worksheet for the vehicle. The worksheet showed the "sale price" as \$37,990, which was \$390 higher than the price on the published advertisement. The following additional charges were also added to the price of the vehicle:
 - a. "Pfaff Delivery Prep" fee of \$699
 - b. OMVIC fee of \$10
9. The OMVIC Representative inquired about the "Pfaff Delivery Prep" fee and asked if it was optional. In response, the salesperson advised that the fee was for gas, floor mats and a one-year loan protection and that it was added to both cash and finance deals. The salesperson did not directly state that the fee was optional.
10. After the OMVIC Representative left the Dealer's premises, the OMVIC Representative located the advertisement for the vehicle on the Dealer's website and noticed that the advertised price had changed to \$38,000, which was \$10 higher than the "sale price" provided on the worksheet. The new advertisement appeared to include the OMVIC fee of \$10 but did not include the "Pfaff Delivery Prep" fee of \$699.
11. As such, the Dealer's advertised vehicle price was not all-inclusive. This is contrary to section 36(7) of O. Reg. 333/08, as well as sections 4(2) and 9(3) of the Code of Ethics.

Smith's Non-Compliance:

12. Smith, as a Person in Charge of the day-to-day activities of the Dealer at all material times, failed to ensure that the Dealer conducted its business in compliance with the Act, its regulations, and the Code of Ethics and thus personally contravened sections 6(2) and 9(3) of the Code of Ethics.

Dealer's Subsequent Internal Communications:

13. On or about April 25, 2023, Smith sent an email to the salespeople acting on behalf of the Dealer, emphasizing that the "Pfaff Delivery Prep" fee should be removed if a consumer does not wish to purchase the product.

14. On or about March 5, 2024, after receiving the NOC, Smith sent an email to the salespeople acting on behalf of the Dealer. The email stated the following points:
- a. For new vehicles, the “Pfaff Delivery Prep” fee was optional and should be removed if a consumer does not wish to purchase the product.
 - b. For used vehicles, the online price should include the “Pfaff Delivery Prep” fee, admin fee, and OMVIC fee.

Dealer’s Subsequent Trainings:

15. The Dealer has indicated that it has a dedicated trainer for all sales staff, with trainings built on full compliance with the Act, its regulations, and the Code of Ethics. The Dealer has indicated that its trainer has completed trainings with the Dealer’s staff on the following dates after the mystery shop:

- a. March 15, 2023
- b. April 13, 2023
- c. May 25, 2023
- d. June 21, 2023
- e. September 6, 2023
- f. October 15, 2023
- g. October 20, 2023
- h. February 29, 2024
- i. May 15, 2024
- j. June 15, 2024
- k. July 17, 2024
- l. August 13, 2024
- m. September 4, 2024
- n. September 11, 2024
- o. October 24, 2024

16. Additionally, the Dealer has indicated that it conducts in store training for all staff twice weekly, typically on the Monday and Thursday of each week.

17. As particularized above, the Dealer has contravened the following section of the Code of Ethics:

Disclosure and marketing

s. 4(2) A registrant shall ensure that all representations, including advertising, made by or on behalf of the registrant in connection with trading in motor vehicles, are legal, decent, ethical and truthful.

18. As particularized above, Smith, as a Person in Charge of the day-to-day activities of the Dealer at all material times, and the Dealer have contravened the following section of the Code of Ethics:

Professionalism

s. 9(3) A registrant shall use the registrant’s best efforts to prevent error, misrepresentation, fraud or any unethical practice in respect of a trade in a motor vehicle.

19. As particularized above, Smith, as a Person in Charge of the day-to-day activities of the Dealer at all material times, has contravened the following section of the Code of Ethics:

Accountability

s. 6(2) A registered salesperson shall not do or omit to do anything that causes the registered motor vehicle dealer who employs or retains the salesperson to contravene this Regulation or any applicable law with respect to trading in motor vehicles.

Decision of the Reviewing Panel

Having reviewed and considered the Agreed Statement of Facts and written submissions provided by the Parties, the Reviewing Panel is satisfied that the evidence contained in the Agreed Statement of Facts substantiates the allegations that: (1) the Dealer has breached subsections 4(2) and 9(3) of the OMVIC Code of Ethics; (2) Smith has breached subsections 6(2) and 9(3) of the OMVIC Code of Ethics.

The Reviewing Panel accepted the parties' proposed resolution for the reasons below.

Reasons for Decision

The Reviewing Panel received and considered comprehensive written materials from the parties and was left satisfied that the proposed resolution has no risk of being contrary to the public interest. The outcome is clearly connected to the admitted breaches of the Code of Ethics and consistent with other outcomes ordered in this Tribunal in similar cases. In such circumstances, disposition under Rule 1.07 is appropriate and ordered accordingly.

Ontario Motor Vehicle Industry Council
Discipline Tribunal

Dated: February 11, 2025

S. Darvish

Sherry Darvish, Discipline Tribunal Chair,
Public member
On behalf of:

Nelson Caetano, Registrant
Chris Pinelli, Registrant

