

## DISCIPLINE DECISION

REVIEWING PANEL: Sherry Darvish, Public Member  
Joe Wade, 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

BETWEEN:

REGISTRAR, *MOTOR VEHICLE DEALERS ACT, 2002*

-AND-

1802247 ONTARIO INC o/a COLLINGWOOD HYUNDAI

-AND-

ADAM NIGRO

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Pursuant to Rule 1.07 of the Rules of Practice before the Discipline Committee and the Appeals Committee, a Reviewing Panel has 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:** October 18, 2023

**Findings:** The Dealer has contravened the following:  
Sections 4(2), 7(1), and 9(1) of the Code of Ethics, Ontario Regulation  
332/08

Adam Nigro has contravened the following:

6(2) and 9(1) of the Code of Ethics, Regulation 332/08

**Order:**

1. 1802247 Ontario Inc. o/a Collingwood Hyundai (the "Dealer") is ordered to pay a fine in the amount of \$8,500 no later than **December 31, 2023**
2. Nigro is ordered to pay a fine in the amount of \$2,500 no later than **December 31, 2023.**

3. Nigro shall is ordered to complete the MVDA Key Elements Course no later than **December 31, 2023**
4. The Dealer is ordered to offer all current and future sales staff the opportunity to complete the MVDA Key Elements Course. Current sales staff will be offered the course no later than **December 31, 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 after January 1, 2009, or who are otherwise required to do so pursuant to the Act.
5. The Dealer and Nigro shall comply with the Act and Standards of Business Practice, as may be amended from time to time.

### **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.

#### **Background:**

1. 1802247 Ontario Inc o/a Collingwood Hyundai (the "Dealer") was first registered as a motor vehicle dealer in or around September 2009.
2. Adam Nigro("Nigro") was first registered as a motor vehicle salesperson in or around August 1995. Since on or before June 23, 2021, Nigro has been the person in charge of the day-to-day activities of the Dealer.
3. Nigro successfully completed the MVDA Key Elements course (the "Course") on or about November 30, 2020.
4. The following is included in the Course materials:
  - a. Dealers' obligation to disclose all material facts about the vehicles they sell, including but not limited to, previous accident damage and/or previous out of province registration ("disclosure obligations").
  - b. Dealers' obligation to ensure advertised vehicle prices include all additional non-negotiable fees ("all-in pricing").

#### *OMVIC registrant education re: all-in pricing*

5. Since the Act was proclaimed, OMVIC has issued various publications and webinars reminding dealers of their all-in pricing obligations. The dates of said publications are attached hereto as Schedule A. All these publications continue to be available on OMVIC's website.
6. Since the Act was proclaimed, OMVIC has issued various publications and webinars reminding dealers of their disclosure obligations. The dates of said publications are

attached hereto as Schedule B. All these publications continue to be available on OMVIC's website.

*Prior Discipline Committee Order:*

7. On or about June 4, 2020, the Registrar issued a Notice of Complaint against the Dealer for failing to comply with all-in pricing.
8. On or about September 24, 2020, the Discipline Committee issued an Order against the Dealer, pursuant to a negotiated resolution of the above-mentioned Notice of Complaint, attached hereto as Schedule C.
9. As per condition 5 of the Order, the Dealer agreed to have all current and future staff review the "OMVIC August 2017-Advertising Webinar".

*Direct correspondence with Dealer:*

10. By letter dated May 11, 2022, Nigro was reminded of the Dealer's all-in pricing obligations.

Dealer's contravention of the Code of Ethics:

11. During an inspection of the Dealer on or about November 29, 2022, the following non-compliance issues were found:

*All-in pricing non-compliance:*

- a. On or before November 12, 2022, the Dealer advertised a vehicle with a selling price of \$41,824 plus tax and licensing. On or about November 12, 2022, Nigro sold this vehicle on behalf of the Dealer for \$329.70 over the advertised price. As such, the advertised price was not all-inclusive, contrary to section 36(7) of ON Reg. 333/08, as well as sections 4(2) and 9(1) of the Code of Ethics. The Dealer has since refunded the purchaser the amount they were overcharged for their vehicle, in addition to providing a \$100 service credit.

*Non-disclosure:*

- b. On or about June 17, 2022, Nigro sold a 2017 Nissan Murano (VIN 5N1AZ2MH4HN194144) on behalf of the Dealer but failed to disclose to the purchaser that this vehicle had sustained \$7,523 in accident damage. This is contrary to sections 42(19) and 42(25) of ON Reg. 333/08, as well as sections 7(1) and 9(1) of the Code of Ethics. The Dealer has since provided the purchaser with \$1,000 in compensation for their lack of disclosure with respect to this vehicle's accident damage history.
- c. On or about July 18, 2022, Nigro sold a 2017 Hyundai Santa Fe (VIN 5XYZUDLA5HG494658) on behalf of the Dealer but failed to disclose to the purchaser that this vehicle had been previously registered in Quebec. This is contrary to sections 42(22) and 42(25) of ON Reg. 333/08, as well as sections 7(1) and 9(1) of the Code of Ethics. The Dealer alleges they have since tried

unsuccessfully to contact the purchaser of this vehicle to inform them of their vehicle's out of province history.

Nigro's contraventions of the Code of Ethics

12. Nigro failed to ensure that the Dealer conducted its business in compliance with the Act and Code of Ethics and thus personally contravened sections 6(2) and 9(1) of the Code of Ethics.

By failing to comply with the following sections of the Motor Vehicle Dealers Act, 2002 ON. Reg. 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:

(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.

(22) If the motor vehicle previously received treatment in a jurisdiction other than Ontario that was equivalent to having had a permit issued under section 7 of the Highway Traffic Act or having been traded in Ontario, a statement to that effect and a statement of which jurisdictions, except if one or more permits have been issued for the vehicle under section 7 of that Act to cover at least the seven previous consecutive years.

(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 has breached the following section of the Code of Ethics, as set out in Regulation 332/08:

*Disclosure and marketing:*

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.

Compliance:

7. (1) 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.

Accountability:

It is thereby agreed that Nigro has breached the following section of the Code of Ethics, as set out in Regulation 332/08:

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.

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

Professionalism:

9. (1) 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.

### **Decision of the Reviewing Panel**

Having reviewed and considered the Agreed Statement of Facts, as well as the additional submissions provided by the Parties, the Reviewing Panel is satisfied that the facts as set out in the Agreed Statement of Facts support the allegations that the Dealer has breached subsections 4(2), 7(1), and 9(1) of the OMVIC Code of Ethics, and Nigro has breached subsections 6(2) and 9(1), as set out in Ontario Regulation 332/08, made under the *Motor Vehicle Dealers Act, 2002*.

The Reviewing Panel notes that this is the dealer's second time through discipline and that the penalty is in the range of a higher amount for this type of offence.

The Reviewing Panel also agrees with the Parties' Joint Submission on Penalty and determines that the penalty is in the public interest and serves as a general and specific deterrence. Accordingly, the Reviewing panel makes the following Order:

1. 1802247 Ontario Inc. o/a Collingwood Hyundai (the "Dealer") is ordered to pay a fine in the amount of \$8,500 no later than **December 31, 2023**
2. Nigro is ordered to pay a fine in the amount of \$2,500 no later than **December 31, 2023.**
3. Nigro shall is ordered to complete the MVDA Key Elements Course no later than **December 31, 2023**

4. The Dealer is ordered to offer all current and future sales staff the opportunity to complete the MVDA Key Elements Course. Current sales staff will be offered the course no later than **December 31, 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 after January 1, 2009, or who are otherwise required to do so pursuant to the Act.
5. The Dealer and Nigro shall comply with the Act and Standards of Business Practice, as may be amended from time to time.

Dated: October 19<sup>th</sup>, 2023

Ontario Motor Vehicle Industry Council  
Discipline Committee

A handwritten signature in black ink, appearing to read 'Joe Wade', written over a horizontal line.

Joe Wade, *Discipline Committee Chair*

On behalf of  
Sherry Darvish, *Public Member*  
Chris Pinelli, *Member*

