

## 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 -

KK MOTORS CANADA INC.

- AND -

KAJENDRAN KASIPPILLAI

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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:** July 11, 2015

**Findings:** Breach of Sections 7 and 9 of the Code of Ethics

**Order:**

1. The Dealer is ordered to pay a fine in the amount of \$5,000. \$1,000 is due within 30 days of the date of the Discipline Committee Order and the remaining balance is due within 180 days of the date of the Discipline Committee Order.
2. Kasippillai is ordered to successfully complete the OMVIC certification course within 90 days of the date of the Discipline Committee Order.
3. The Dealer is ordered to offer all 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.
4. The Dealer and Kasippillai 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. KK Motors Canada Inc (the "Dealer") was first registered as a motor vehicle dealer in or around July 2011. Kajendran Kasippillai ("Kasippillai") was first registered as a motor vehicle sales person in or around July 2011. At all material times, Kasippillai was the sole director of the Dealer.
2. On or about July 16, 2011, Kasippillai executed terms and conditions of registration on behalf of the Dealer. As per condition 7, the Dealer agreed to comply with the Code of Ethics. As per condition 23, the Dealer agreed it is under a positive obligation to disclose in writing on the bill of sale all material facts about the vehicles it sells.
3. During an inspection on or about November 3, 2011, a representative of the Registrar reviewed with Kasippillai, on behalf of the Dealer, the Dealer's terms and conditions of registration. Material fact disclosure was also reviewed at this time.
4. During an inspection on or about October 31, 2014, a representative of the Registrar found the following areas of non-compliance:
5. On or about May 6, 2014, the Dealer purchased a 2012 Nissan Rogue, (VIN JN8AS5MV9CW410531) with the following declarations:
  - a. Vehicle has been declared a total loss by the insurer
  - b. The manufacturers [sic] warranty has been cancelled
  - c. Repair estimate: 24,079.96
  - d. Brand ON: Salvage
  - e. Total distance travelled is unknown, but as of 4/08/2014 it was believed to be 34,000km. The total distance travelled is believed to be higher than the distance indicated. Odometer is unreadable.

On or about June 6, 2014, the Dealer sold this vehicle without providing the purchaser with written disclosure of a, b, and e. This is contrary to sub-sections 42 (4), 42(20), 42(21), 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 a letter from the purchaser indicating they may have been made aware of the missing disclosure information at the time of purchase.



6. On or about May 9, 2014, the Dealer purchased a 2011 Volkswagen Jetta, (VIN 3VWDL7AJ5BM009556) with the following declarations:
- Vehicle has been declared a total loss by the insurer
  - The manufacturers [sic] warranty has been cancelled
  - Repair estimate: 21,797.17
  - Brand ON: Salvage

On or about August 21, 2014, the Dealer sold this vehicle without providing the purchaser with written disclosure of a, and b. This is contrary to sub-sections 42(20), 42(21), 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 a letter from the purchaser indicating they may have been made aware of the missing disclosure information at the time of purchase.

7. On or about August 12, 2014, the Dealer purchased a 2008 Honda CR-V, (VIN 5J6RE48348L819807) with the following declarations:
- Vehicle has been declared a total loss by the insurer
  - The manufacturers [sic] warranty has been cancelled
  - Repair estimate: 12,279.74
  - Total distance travelled is unknown, but as of 6/3/2014 it was believed to be 78,732km. The total distance travelled is believed to be higher than the distance indicated. Odometer is good.

On or about August 24, 2014, the Dealer sold this vehicle without providing the purchaser with written disclosure of a, b, and d. This is contrary to sub-sections 42(4), 42(20), 42(21), 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 a letter from the purchaser indicating they may have been aware of the missing disclosure information at the time of purchase.

8. On or about September 11, 2014, the Dealer purchased a 2010 Dodge Grand Caravan, (VIN 2D4RN4DE8AR156030) with the following declarations:
- Vehicle has been declared a total loss by the insurer
  - The manufacturers [sic] warranty has been cancelled
  - Repair estimate: 15,094.65
  - Total distance travelled is unknown, but as of 8/14/2014 it was believed to be 119,279km. The total distance travelled is believed to be higher than the distance indicated. Odometer is unreadable.

On or about October 8, 2014, the Dealer sold this vehicle without providing the purchaser with written disclosure of a, b, c, and d. This is contrary to sub-sections 42(4), 42(19), 42(20), 42(21), 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 a letter from the purchaser indicating they may have been aware of the missing disclosure information at the time of purchase.



By failing to comply with the following sections of the Act:

Regulation 333/08:

42. Additional information in contracts of sale and leases:

4. If the motor vehicle is a used motor vehicle and the registered motor vehicle dealer cannot determine the total distance that the vehicle has been driven but can determine the distance that the vehicle has been driven as of some past date, a statement of that distance and date, together with a statement that the total distance that the vehicle has been driven is believed to be higher than that distance.

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.

20. If the manufacturer's warranty on the motor vehicle was cancelled, a statement to that effect.

21. If the motor vehicle was declared by an insurer to be a total loss, regardless of whether the vehicle was classified as irreparable or as salvage under section 199.1 of the Highway Traffic Act, a statement to that effect.

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 Kasippillai 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.

### **Joint Submission on Penalty**

1. The Dealer agrees to pay a fine in the amount of \$5,000. \$1,000 is due within 30 days of the date of the Discipline Committee Order and the remaining balance is due within 180 days of the date of the Discipline Committee Order.
2. Kasippillai agrees to successfully complete the OMVIC certification course within 90 days of the date of the Discipline Committee Order.
3. The Dealer agrees to offer all 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.

4. The Dealer and Kasippillai 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 Kasippillai breached subsections 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 \$5,000. \$1,000 is due within 30 days of the date of the Discipline Committee Order and the remaining balance is due within 180 days of the date of the Discipline Committee Order.
2. Kasippillai is ordered to successfully complete the OMVIC certification course within 90 days of the date of the Discipline Committee Order.
3. The Dealer is ordered to offer all 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.
4. The Dealer and Kasippillai 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

