

**DISCIPLINE COMMITTEE OF THE
ONTARIO MOTOR VEHICLE INDUSTRY COUNCIL**

PANEL:	Mr. Robert MacKay (Chair)	Public Member
	Mr. Orest Saczyk	Registrant
	Mr. Stuart Sherman	Registrant

BETWEEN:

)	
)	
REGISTRAR, MOTOR VEHICLE DEALERS ACT, 2002)	Mr. Brian Osler for the Ontario Motor Vehicle Industry Council
)	
- and -)	
)	
PLATINUM CARS INC. and Mr. SHAUN JALILI)	Mr. Shaun Jalili, self-represented
)	

Heard: June 26, 2014

Also present at the hearing were:

Ms. Luisa Ritacca - Independent Legal Counsel to the Panel

Ms. Andrea Korth - Business Standards Coordinator OMVIC

Mr. Travis Green - Court Reporter

DECISION AND REASONS ON PENALTY

INTRODUCTION

This was a hearing on penalty regarding Mr. Shaun Jalili (“Mr. Jalili” or the “Registrant”) and Platinum Cars Inc. (the “Dealer”) which took place before a panel of the Discipline Committee (the “Panel”) on June 26, 2014. The Panel had previously made finding against the Registrants for breaches of Ontario Regulation 332/08 and Ontario

Regulation 333/08. The Panel's Decision and Reasons on liability were issued on April 10, 2014 (the "Decision").

ORDER

1. The Dealer (Platinum Cars Inc.) is ordered to pay a fine in the amount of $(22 \times \$750.00 = \$16,500.00 \text{ PLUS } 5 \times \$1,000.00 = \$5,000.00) \$21,500.00$;
2. The registrant Mr. Shaun Jalili is ordered to pay a fine in the amount of \$3,000.00. The total fine is \$24,500.00 payable to the Ontario Motor Vehicle Industry Council and due within 120 days of this order;
3. Mr. Shaun Jalili is ordered to successfully retake the OMVIC certification course, within 90 days of the date of the Discipline Committee Order. Mr. Jalili will incur all costs associated with this, and
4. The Dealer is ordered to, in writing, offer all present and future registered salespeople the opportunity to complete the OMVIC certification course. Current registered salespeople are to be offered the course, in writing, within 90 days of the date of the Discipline Committee Order. The Dealer will incur all costs associated with this and retain written confirmation the offer was made, and make it available for review at any future OMVIC audit.

OVERVIEW

The hearing into allegations of violations of the Code of Ethics and Standards of Business Practice against Mr. Jalili and the Dealer took place before a panel of the Discipline Committee on March 18, 2014. The allegations against the Registrant and the Dealer were set out in the Notice of Complaint dated July 8, 2013 and the Notice of Complaint Notice of Further and other Particulars dated November 6, 2013.

The Panel, in its Decision, found that Mr. Jalili and the Dealer to have committed acts of professional misconduct in that:

Platinum Cars Inc. and Mr. Shaun Jalili have breached Section 9 of the Code of Ethics as set out in *Ontario Regulation 332/08* in that their actions would reasonably be regarded as unprofessional and unbecoming of a registrant.

Furthermore, they have breached section 36(7) of *Ontario Regulation 333/08* by not providing "All-In" pricing in their advertising.

SUMMARY OF SUBMISSIONS ON PENALTY

OMVIC's submissions

In support for the Registrar's position, counsel provided the Panel with two earlier decision of the Discipline Committee:

1. Ontario Motor Vehicle Council and Mathath Corporation o/a Matkath Auto Sales & Christopher Hader. (April 12, 2013)
2. Ontario Motor Vehicle Council and Luxe Inc. o/a Curve Motors and Amir & Hamid Hosseini (November 4, 2013)

Counsel for the Registrar took the Panel through the prior decisions to highlight the similarities between the facts in those cases and the facts in the present case. As in this case, the registrants in the earlier decisions were found to have failed to comply with the advertising requirements as contemplated in the Code of Ethics and Regulations. In the prior cases, the Discipline Committee fined the registrants between \$750.00 to \$1,000.00 per infraction.

The Registrar acknowledged that Mr. Jalili and the Dealer did make efforts to change their advertising and had stopped collecting the "fee" after the inspection of, and subsequent report of the dealership.

However, counsel submitted that there was no apparent attempt to change the advertisements between the issuance of the first Notice of Complaint and the inspection of August 14, 2013. Further there was no follow up with Boost 3.0 (company running the internet advertisements) to ensure all the changes were in fact made. All of this inaction in the face of a very important matter which, as Dealer Principal, Mr. Jalili ought to have been well aware of and to have taken more seriously.

Counsel for the Registrar suggested the amount of \$1,000.00 per violation was appropriate given the facts of this matter. He recognized however that given there were upwards of 60-advertisements involved, this would exceed the maximum penalty available under the legislation. Counsel further submitted that a \$3,000.00 fine should be levied against Mr. Jalili personally. He argued that this was consistent with prior cases, where the Discipline Committee has held that directors of dealerships cannot act with impunity in the operation of the dealership.

It was further submitted by counsel for the Registrar that in an effort to mitigate future violations by Mr. Jalili and Platinum Cars Inc., an appropriate order would be for Mr. Jalili to retake the OMVIC certification course. In addition the Dealer should be ordered

to offer all present and future registered salespeople the opportunity to complete the OMVIC certification course, with the Dealer to incur all costs associated with this.

Mr. Jalili's submissions

Mr. Jalili submitted that the Panel should impose no monetary fine on him or the Dealer. He repeated his initial submissions that the "All in Pricing" requirements are confusing, and the "one letter"¹ he received from OMVIC he says he responded to² in a timely fashion. He reminded the Panel that he made efforts to have the advertisements changed however "it just didn't work". Mr. Jalili also distances himself from liability by referring to this as a "mishap" with Boost 3.0 which the company has admitted to.³

In reply to the Registrar's submission that he, and the registered salespeople at his dealership, retake the OMVIC certification course, Mr. Jalili asserted that would be a "total waste of time". He did not elaborate on if, or in what way, he may now have a better understanding of the advertising requirements he violated.

Finally, Mr. Jalili submitted that the Panel should consider it a mitigating factor that he never collected the \$399 'fee' after the dealer inspection of August 14, 2013.

¹ Notice of Complaint dated July 8, 2013 (Exhibit 1)

² Letter to Andrea Korth dated July 24, 2013 (Exhibit 6)

³ Open letter from Boost 3.0 dated November 28, 2013 contained in Mr. Jalili's Book of Documents (Exhibit 7)

DECISION AND REASONS ON PENALTY

Having reviewed the oral submissions of the parties, received advice on the record from its independent legal counsel, reviewed the relevant exhibits, and the prior Decision, the Panel finds the following items were important in determining an appropriate penalty:

- Mr. Jalili failed to take reasonable steps to ensure his advertisements were compliant with “All In pricing”;
- It was established at the hearing that on August 19, 2013, following the issuance of the Notice of Complaint (July 8, 2013), and the inspection (August 14, 2013) there continued to be 22 advertisements by the Dealer not in compliance with “All In pricing”;
- It was established at the hearing that on November 5, 2013 there continued to be 5 advertisements by the Registrant not in compliance with “All In pricing”;
- Notwithstanding Mr. Jalili’s statement that he had approximately 60 vehicles offered for sale at the relevant time, there was no evidence as to whether or not those vehicles would have been advertised in compliance with “All In pricing” or not;
- Mr. Jalili, by his own admission, continues to find “All in pricing” confusing;
- Mr. Jalili has not taken responsibility for most of his behaviours which resulted in findings against him, and
- At the relevant time, there was a lack of care or concern for the information the public was seeing in the Dealer’s advertising.

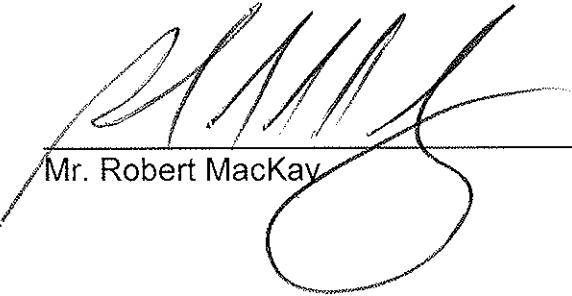
The Panel recognized that the penalty it orders must protect the public and the public confidence in the profession. The Panel also considered that an appropriate penalty must act as a specific deterrent to Mr. Jalili and a general deterrent to other members of the profession. Having considered the aggravating and mitigating factors in the

circumstances of this matter, and for these reasons the Panel makes the following orders:

1. The Dealer (Platinum Cars Inc.) is ordered to pay a fine in the amount of (22 X \$750.00= \$16,500.00 PLUS 5 X \$1,000.00= \$5,000.00) \$21,500.00;
2. The registrant Mr. Shaun Jalili is ordered to pay a fine in the amount of \$3,000.00. The total fine is \$24,500.00 payable to the Ontario Motor Vehicle Industry council and due within 120 days of this order;
3. Mr. Shaun Jalili is ordered to successfully retake the OMVIC certification course, within 90 days of the date of the Discipline Committee Order. Mr. Jalili will incur all costs associated with this, and
4. The Dealer is ordered to, in writing, offer all present and future registered salespeople the opportunity to complete the OMVIC certification course. Current registered salespeople are to be offered the course, in writing, within 90 days of the date of the Discipline Committee Order. The Dealer will incur all costs associated with this and retain written confirmation the offer was made, and make it available for review at any future OMVIC audit.

CONCLUSION

I, Robert MacKay, sign this decision and reasons for the penalty on behalf of the members of the Discipline Panel as set out below.



Mr. Robert MacKay

Date: July 18, 2014

Panel Members:

Mr. Robert MacKay
Mr. Orest Saczyk
Mr. Stuart Sherman