

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 -

JAMES MITTENDORF o/a FIVE STAR AUTO DETAILING

- and -

JAMES K. MITTENDORF

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: November 18, 2020

Findings: Breach of Sections 6, 7 and 9 of the Code of Ethics

Order:

1. The Dealer is ordered to pay a fine in the amount of \$5,600 no later than **January 31, 2021.**
2. The Dealer and K. Mittendorf are ordered to successfully complete the Automotive Certification Course (the "Course") no later than **January 31, 2021.**
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 no later than **January 31, 2021.** 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. As in all other areas of its business, the Dealer and K. Mittendorf agree to 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. James Mittendorf o/a Five Star Auto Detailing (the "Dealer") was first registered as a motor vehicle dealer in or around November 2007.
2. James K. Mittendorf ("K. Mittendorf") was first registered as a motor vehicle salesperson in or around December 2013. James K. Mittendorf is the son of the Dealer.
3. Since obtaining his registration, K. Mittendorf has been employed as a salesperson registered to the Dealer. Since on or about January 8, 2020, K. Mittendorf has been the person in charge of the day to day activities of the Dealer's business operations.
4. On or about November 26, 2007, the Dealer executed terms and conditions of registration.
5. As per condition 20, the Dealer agreed to provide purchasers with written disclosure, on the bill of sale, of all material facts about the vehicles he sells.
6. On or about November 27, 2013, K. Mittendorf successfully completed the Automotive Certification course (the "Course"). Included in the course materials are the disclosure requirements for dealers when selling motor vehicles.

OMVIC publications

7. In the winter of 2008, OMVIC issued a Dealer Standard publication advising dealers of the up and coming changes to the Act, including the requirement for dealers to provide purchasers with written disclosures of a vehicle's accident history and previous daily rental use ("disclosure requirements"). OMVIC further issued the following Dealer Standard publications reminding dealers of the disclosure requirements:

- a. Spring 2009
- b. Summer 2011
- c. Summer 2012
- d. Summer 2013
- e. Issue #4 2014
- f. Issue #4 2016
- g. Issue #3 2017

8. Furthermore, OMVIC issued the following dealer bulletins which also reminded dealers of the disclosure requirements:

- a. January 2010
- b. September 2012
- c. December 2013

9. In addition to the above referenced publications, in around December 2014 and June 2015, OMVIC hosted webinars to assist registrants in understanding their disclosure requirements. The contents of said webinars continue to be available on OMVIC's website.

Direct correspondence with Dealer:

10. During an inspection of the Dealer on or about June 4, 2014, a representative of the Registrar reminded the Dealer of his disclosure requirements.

Dealer non-compliance:

11. During an inspection of the Dealer's books and records on about January 8, 2020, a representative of the Registrar found the following non-compliant trades:

Non-disclosure: Accident history

- a. On or about May 24, 2019, the Dealer purchased a 2012 Nissan Versa (VIN 3N1BC1CP9CL363793). This vehicle had sustained \$3,407 in accident damage. On or about June 26, 2019, K. Mittendorf sold this vehicle on behalf of the Dealer without disclosing the vehicle's accident damage history in writing on the bill of sale. This is contrary sections 42(19) and 42(25) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. The Dealer has since provided confirmation the purchaser has been made aware of their vehicle's history.
- b. On or about June 17, 2019, the Dealer purchased a 2010 Hyundai Genesis (VIN KMHHT6KD5AU034521). This vehicle had sustained 2 separate accidents which resulted in damage in the amounts of \$4,905 and \$7,798. On or about May 2, 2019, K. Mittendorf sold this vehicle on behalf of the Dealer without disclosing the vehicle's accident damage history in writing on the bill of sale. This is contrary to sections 42(19) and 42(25) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. The Dealer has since provided confirmation the purchaser has been made aware of their vehicle's history.

- c. On or about March 2, 2019, the Dealer sold a 2007 Chevrolet Uplander (VIN 1GNDV33197D114520) without providing written disclosure on the bill of sale of the vehicle's accident damage history in the amount of \$5,631. This is contrary to sections 42(19) and 42(25) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. The Dealer has since provided confirmation the purchaser has been made aware of their vehicle's history.
 - d. On or about March 4, 2019, the Dealer sold a 2007 Chevrolet Equinox (VIN 2CNDL13F776083602) without providing written disclosure on the bill of sale of the vehicle's accident damage history in the amount of \$5,974. This is contrary sections 42(19) and 42(25) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. The Dealer has since provided confirmation the purchaser has been made aware of their vehicle's history.
12. The Dealer has failed to comply with his obligation to thoroughly research the histories of the vehicles he sells. This is contrary to section 9 of the Code of Ethics.
13. K. Mittendorf's conduct with respect to the above referenced vehicle trades has caused the Dealer to contravene the Regulations, and Code of Ethics. As such, K. Mittendorf has personally contravened sections 6 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:

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.

(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:

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.

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

Accountability:

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 K. Mittendorf have breached the following sections 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.

Joint Submission on Penalty

1. The Dealer agrees to pay a fine in the amount of \$5,600 no later than **January 31, 2021.**
2. The Dealer and K. Mittendorf agree to successfully complete the Automotive Certification Course (the "Course") no later than **January 31, 2021.**
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 no later than **January 31, 2021.** 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. As in all other areas of its business, the Dealer and K. Mittendorf 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 K. Mittendorf have breached subsections 6, 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 \$5,600 no later than **January 31, 2021.**
2. The Dealer and K. Mittendorf are ordered to successfully complete the Automotive Certification Course (the "Course") no later than **January 31, 2021.**

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 no later than **January 31, 2021**. 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. As in all other areas of its business, the Dealer and K. Mittendorf agree to comply with the Act and Standards of Business Practice, as may be amended from time to time.

Ontario Motor Vehicle Industry Council
Discipline Committee

A handwritten signature in black ink, appearing to read 'Paul Burroughs', with a horizontal line underneath it.

Paul Burroughs, Chair