

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

BETWEEN:

REGISTRAR, *MOTOR VEHICLE DEALERS ACT, 2002*

- AND -

PETRA AUTO TRADE CENTRE INC.

- AND -

MAMOON SMADI

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: December 4, 2014

Findings: Breach of Sections 5, 7 and 9 of the Code of Ethics

Order:

1. The Dealer is ordered to pay a fine in the amount of \$5,500 within 180 days of the date of the Discipline Committee Order. The fine is payable to the Ontario Motor Vehicle Industry Council.
2. Smadi is ordered to successfully complete the OMVIC certification course, within 90 days of the date of the Discipline Committee Order. The Dealer will incur all costs associated with this.
3. The Dealer is ordered to offer all registered salespeople the opportunity to complete the OMVIC certification course, within 90 days of the date of the Discipline Committee Order. The dealer will pay all costs associated with this. Future sales staff will be offered the course within 90 days if being retained in this capacity by the Dealer. The Dealer will pay all costs associated with this. It is understood between the parties this clause does not apply to sales staff who have completed the course or who are otherwise required to do so pursuant to the Act.

4. The Dealer shall comply with the *Motor Vehicle Dealers Act, 2002* 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. Petra Auto Trade Centre Inc. (the "Dealer") was first registered as a motor vehicle dealer in or around January 2003. Mamoon Smadi ("Smadi") was first registered as a motor vehicle salesperson in or around January 2003. At all material times, Smadi was the officer and director of the Dealer.
2. On or about January 13, 2003, the Dealer executed terms and conditions of registration, a copy of which are attached hereto as schedule "A". As per condition K, the Dealer agreed to disclose all material facts about the vehicles they sell to their customers.

Material Fact Non-Disclosure:

3. During an inspection on or about November 22, 2007, a representative of the Registrar reminded the Dealer of their obligation to ensure that all vehicle disclosures are made in writing on the purchase agreement.
4. In the winter of 2008, OMVIC issued a Dealer Standard publication which highlighted some of the upcoming changes that would take place when the *Motor Vehicle Dealers Act, 2002* (the "Act") came into effect, including the requirement for dealers to disclose all material facts on purchase agreements.
5. In or around December 2008, OMVIC issued a bulletin which highlighted some of the upcoming changes that would take place when the Act came into effect, including the requirement for dealers to disclose all material facts on purchase agreements.
6. During an inspection on or about September 30, 2009, a representative of the Registrar reminded the Dealer of their obligation to ensure that all vehicle disclosures are made in writing on the purchase agreement.

7. Once the Act came into effect, the following bulletins further reminded dealers of the requirement to disclose all material facts on purchase agreements:
 - a. January 2010
 - b. September 2012
8. Furthermore, OMVIC issued the following Dealer Standard publications reminding dealers of their obligations to provide consumers with written disclosure of a vehicle's accident repair history and previous out of province registrations:
 - a. Summer 2011
 - b. Summer 2012
 - c. Winter 2013
9. During an inspection on or about May 7, 2012, a representative of the Registrar reminded the Dealer of their obligation to ensure that all vehicle disclosures are made in writing on the purchase agreement.
10. In a letter dated July 18, 2012, the Dealer was reminded to ensure that all vehicle material facts, including but not limited to Out of Province and accident repair, are to be in writing on the purchase agreement.
11. In the winter of 2013, OMVIC issued a Dealer Standard publication reminding dealers of the requirement to disclose vehicles previously registered in a jurisdiction other than Ontario, in writing on the purchase agreement.
12. On or about August 29, 2013, the Dealer purchased a 2004 Chevrolet Venture (VIN 1GNDU03E04D251930), declared as having previously being registered in Quebec. On or about September 9, 2013, the Dealer sold this vehicle without providing the purchaser with the required written disclosure of the vehicle's out of province history. This is contrary to sub section 42(22) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. The Dealer has subsequently provided OMVIC with written confirmation from the purchaser that they are now fully aware of their pertinent vehicle history.
13. On or about July 17, 2013, the Dealer took a 2004 Hyundai Elantra (VIN KMHDN55D44U106005) in on trade, declared as accident repair in the amount of \$11,351. On or about September 11, 2013, the Dealer sold this vehicle without providing the purchaser with the required written accident repair history. This is contrary to section 42(19) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. The Dealer has subsequently provided OMVIC with written confirmation from the purchaser that they are now fully aware of their pertinent vehicle history.
14. On or about November 13, 2013, the Dealer purchased a 2007 Nissan X-Terra (VIN 5N1AN08WX7C519463), declared as having being registered in the state of Maryland and with a \$4,369 Accident repair history. On or about November 13, 2014, the Dealer sold this vehicle without providing the purchaser with the required written disclosure of the vehicle's out of province history. This is contrary to sections 5, 7 and 9 of the Code of Ethics. The Dealer has subsequently provided OMVIC with written confirmation from the purchaser that they are now fully aware of their pertinent vehicle history.

Warranty submittals:

15. In or around June 2010, OMVIC issued a bulletin reminding dealers that all documents and funds from the sale of an extended warranty are to be remitted to the extended warranty provider within 7 days of the sale of the warranty.
16. During the inspection previously referred to in paragraph 11, the Dealer was reminded to ensure to remit all documents and payments to the extended warranty provider with 7 days.
17. In the letter previously referred to in paragraph 12, the Dealer was reminded to ensure to remit all documents and payments to the extended warranty provider with the required 7 days.
18. Between on or about September 3, 2013, to on or about December 21, 2013, the Dealer failed to remit extended warranty documents and payments to the extended warranty provider within the required 7 days. This is contrary to section 47 (7) of Regulation 333/08, as well as section 3 and 7 of the Code of Ethics.

By failing to comply with the following regulations under the *Motor Vehicle Dealers Act, 2002*:

Disclosure

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 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 jurisdiction, except if one or more permits have been issued for the vehicle under section 7 of the Act to cover at least the seven previous consecutive years.

Warranty

47. Sale of extended warranty products.

(7). If a registered motor vehicle dealer facilitates the sale of an extended warranty through the dealer to a purchaser or lessee of a motor vehicle who is not a registered motor vehicle dealer, the dealer shall ensure,

- (c) Within 7 days after the parties enter into the contract for the warranty, provide the seller of the warranty with
 - (i) all documents detailing the contract that the dealer has in its possession,
 - (ii) all payments that the dealer has received from the purchaser.

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

5. A registered motor vehicle dealer who enters into a contract to sell or lease a motor vehicle to a person who is also a registered motor vehicle dealer shall ensure that the following information is disclosed in the contract:

(16) If the total costs of repairs to fix the damage caused to the vehicle by an incident exceed \$3,000, a statement to that effect and if the dealer knew the total costs, a statement of the total costs.

(19) If the vehicle previously received treatment in a jurisdiction other than Ontario that was equivalent to having a permit issued under section of the *Highway Traffic Act* or having been traded in Ontario, a statement to that effect and a statement of which jurisdiction, 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.

7. A registrant shall ensure that all documents used by the registrant in the course of 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 \$5,500 within 180 days of the date of the Discipline Committee Order. The fine is payable to the Ontario Motor Vehicle Industry Council.
2. Smadi agrees to successfully complete the OMVIC certification course, within 90 days of the date of the Discipline Committee Order. The Dealer will incur all costs associated with this.
3. The Dealer agrees to offer all registered salespeople the opportunity to complete the OMVIC certification course, within 90 days of the date of the Discipline Committee Order. The dealer will pay all costs associated with this. Future sales staff will be offered the course within 90 days if being retained in this capacity by the Dealer. The Dealer will pay all costs associated with this. It is understood between the parties this clause does not apply to sales staff who have completed the course or who are otherwise required to do so pursuant to the Act.
4. The Dealer agrees to comply with the *Motor Vehicle Dealers Act, 2002* 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 Smadi breached subsections 5, 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 \$5,500 within 180 days of the date of the Discipline Committee Order. The fine is payable to the Ontario Motor Vehicle Industry Council.
2. Smadi is ordered to successfully complete the OMVIC certification course, within 90 days of the date of the Discipline Committee Order. The Dealer will incur all costs associated with this.
3. The Dealer is ordered to offer all registered salespeople the opportunity to complete the OMVIC certification course, within 90 days of the date of the Discipline Committee Order. The dealer will pay all costs associated with this. Future sales staff will be offered the course within 90 days if being retained in this capacity by the Dealer. The Dealer will pay all costs associated with this. It is understood between the parties this clause does not apply to sales staff who have completed the course or who are otherwise required to do so pursuant to the Act.
4. The Dealer shall comply with the *Motor Vehicle Dealers Act, 2002* and Standards of Business Practice, as may be amended from time to time.

Ontario Motor Vehicle Industry Council
Discipline Committee



Catherine Poultney, Chair