

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 -

GEORGIAN CHEVROLET BUICK GMC INC. o/a GEORGIAN CHEVROLET

- AND -

MARK WILKEY

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: May 18, 2018

Findings: Breach of Section 4 and 6 of the Code of Ethics

Order:

1. The Dealer is ordered to pay a fine in the amount of \$2,500.00 no later than July 1, 2018.
2. The Dealer is ordered to ensure that all current and future sales staff who are dealing with consumers and who have not completed the Automotive Certification Course (the "Course") since 2010 will complete the Course at the Dealer's expense. Current sales staff will complete the Course no later than August 31, 2018. 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.
3. The Dealer is ordered to appoint an internal auditor who will audit all advertising, offers and bills of sale each month to ensure ongoing compliance with its obligations under the Act.
4. The Dealer 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. Georgian Chevrolet Buick GMC o/a Georgian Chevrolet (the "Dealer") was first registered as a motor vehicle dealer in about January 1983. Mark Wilkey ("Wilkey") was first registered as a motor vehicle salesperson in about April 2003. Wilkey has been employed by the Dealer since about August 2009.

OMVIC publications:

1. In or around December 2008, OMVIC issued a Dealer Standards publication advising dealers of up and coming changes to the Act. Included in the bulletin was the requirement for dealers to advertise all-inclusive vehicle prices ("all-in pricing") in advertisements.
2. After the Act was proclaimed, OMVIC further issued the following Dealer Standard publications reminding dealers of their all-in pricing advertising obligations:
 - a. Spring 2010
 - b. Summer 2010
 - c. Spring 2011
 - d. Spring 2013
 - e. Fall 2013
 - f. Issue #1
 - g. Issue #2
 - h. Issue #3 2014
 - i. Issue #4 2014
 - j. Issue #3 2015
 - k. Issue #1 2016
 - l. Issue #2 2016
 - m. Issue #3 2016
 - n. Issue #4 2016
3. Furthermore, OMVIC issued the following dealer bulletins which also reminded dealers of their all-in pricing advertising obligations:
 - a. January 2010 (2 publications)



- b. April 2010 (2 publications)
- c. February 2012
- d. August 2012
- e. April 2013
- f. June 2014 (2 publications)
- g. April 2015
- h. July 2017
- i. August 2017

Prior warnings regarding all-in price advertising:

- 4. The Dealer was directly reminded on the following dates of its obligation to advertise all-inclusive vehicle prices:
 - a. June 3, 2010
 - b. November 5, 2013

Prior Discipline Committee Orders:

- 5. On or about May 22, 2014, the Registrar issued a Notice of Complaint ("Notice") against the Dealer for, *inter alia*, failing to comply with the all-inclusive price advertising regulations.
- 6. On or about June 23, 2015, the Discipline Committee issued an Order, pursuant to a negotiated resolution of the above referenced Notice. As per condition 3 of the Order, the Dealer was to offer all salespeople the opportunity to complete the Course, at the Dealer's expense. As per condition 4, the Dealer was ordered to comply with the Act and Standards of Business Practice, as may be amended from time to time.
- 7. On or about July 15, 2015, Wilkey acknowledged having been offered the Course, at the Dealer's expense, pursuant to condition 3 of the above referenced Order.

Consumer Complaint:

- 8. On or before October 2, 2017, the Dealer advertised a 2017 Buick Encore with a selling price of \$28,977 plus HST and Licensing. On or about October 2, 2017, Wilkey attempted to induce the sale of this vehicle on behalf of the Dealer while adding an additional \$454 in fees. As such, the Dealer's advertisement did not promote an all-inclusive price, contrary to section 36(7) of Regulation 333/08, as well as subsection 4(2) of the Code of Ethics as to vehicle pricing only.
- 9. Wilkey presented the aforementioned additional fees to the purchaser as standard additional fees, which was misleading and contrary to subsection 4(2) of the Code of Ethics with respect to vehicle pricing only. Moreover, Wilkey's conduct caused the Dealer to contravene the Regulations, and in doing so he also contravened section 6(2) of the Code of Ethics.



10. The Dealer failed to ensure that its sales staff conducted business in compliance with the Regulations. As such, the Dealer contravened section 6.1 of the Standards of Business Practice, as well as subsections 4(2) and 6(1) of the Code of Ethics as they relate to vehicle pricing only.

By failing to comply with the following:

Regulation 333/08

Section 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.

It is thereby agreed that the Dealer has contravened the following subsections of the Code of Ethics, as set out in Regulation 332/08:

- 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. O. Reg. 332/08, s. 4 (2).
6. (1) A registered motor vehicle dealer shall ensure that every registered salesperson that the dealer employs or retains to act as a salesperson carries out his or her duties in compliance with this Regulation. O. Reg. 332/08, s. 6 (1).

It is thereby agreed that Wilkey has contravened the following subsections of the Code of Ethics, as set out in Regulation 332/08:

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. O. Reg. 332/08, s. 4 (2).
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. O. Reg. 332/08, s. 6 (2).

JOINT SUBMISSION ON PENALTY:

1. The Dealer agrees to pay a fine in the amount of \$2,500.00 no later than July 1, 2018.
2. The Dealer agrees that all current and future sales staff who are dealing with consumers and who have not completed the Automotive Certification Course (the "Course") since



2010 will complete the Course at the Dealer's expense. Current sales staff will complete the Course no later than August 31, 2018. 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.

3. The Dealer agrees to appoint an internal auditor who will audit all advertising, offers and bills of sale each month to ensure ongoing compliance with its obligations under the Act.
4. The Dealer agrees 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 breached subsection 4 and 6 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 \$2,500.00 no later than July 1, 2018.
2. The Dealer is ordered to ensure that all current and future sales staff who are dealing with consumers and who have not completed the Automotive Certification Course (the "Course") since 2010 will complete the Course at the Dealer's expense. Current sales staff will complete the Course no later than August 31, 2018. 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.
3. The Dealer is ordered to appoint an internal auditor who will audit all advertising, offers and bills of sale each month to ensure ongoing compliance with its obligations under the Act.
4. The Dealer 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



Paul Burroughs, Chair

