

DISCIPLINE DECISION

REVIEWING PANEL: Aviva Harari, Public Member
Joe Wade, Registrant
Paul Burroughs, Registrant

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-

TOP HAND INC. o/a AUTOGATHER

-AND-

YANG ZHENG

-AND-

YUN ZHENG

Pursuant to Rule 1.07 of the Rules of Practice before the Discipline Committee and the Appeals Committee, a Reviewing Panel has 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: February 29, 2024

Findings: The Dealer has contravened the following:

Section 9 of the Code of Ethics, Ontario Regulation 332/08

Yang Zheng and Yun Zheng have contravened the following:

6 and 9 of the Code of Ethics, Regulation 332/08

Order:

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.

Background:

Pursuant to section 14(4)(4) of the *Motor Vehicle Dealers Act, 2002* (the "MVDA"), a Notice of Complaint was issued on February 4, 2024 by the Registrar, MVDA against Top Hand Inc. o/a Autogather, Yang Zheng and Yun Zheng, for violating the Code of Ethics as set out in Ontario Regulation 332/08.

The Notice of Complaint was referred to the Discipline Committee to hear and determine whether the aforementioned parties failed to comply with Code of Ethics.

The Notice of Complaint alleged that Top Hand Inc. o/a Autogather, Yang Zheng and Yun Zheng each breached one or more of the following sections of the Code of Ethics and particularized below:

Accountability

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.

(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 the regulation or any applicable law with respect to trading in motor vehicles.

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.

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, dishonorable, unprofessional, or unbecoming of a registrant.

(2) In carrying on business, a registrant shall act with honesty, integrity and fairness.

(3) A registrant shall use the registrant's best efforts to prevent error, misrepresentation, fraud or any unethical practice in respect of a trade in a motor vehicle.

Pursuant to section 4.1 of the *Statutory Powers Procedure Act* and rule 1.07 of the Discipline Committee's Rules of Practice, Top Hand Inc. o/a Autogather, Yang Zheng and Yun Zheng wish to dispose of this proceeding without a hearing, according to the following Agreed Statement of Facts and Penalty.

AGREED STATEMENT OF FACTS AND PENALTY

OVERVIEW

Top Hand Inc. o/a Autogather ("Top Hand") agrees that it has contravened the following subsections of the Code of Ethics, Regulation 332/08 for failing to ensure that it and/or its representatives conducted their business in compliance with the MVDA and the regulations thereunder:

Subsection 9 of the Code of Ethics as it relates to one (1) instance when Top Hand's failed to comply with the requirements for written contracts relating to consignment sales, contrary to section 45 of Regulation 333/08.

Subsection 9 of the Code of Ethics as it relates to eight (8) instances when Top Hand, and/or its salespersons on its behalf, traded outside of its wholesaler class of registration. This was contrary to section 21 of Regulation 333/08 and a breach of Top Hand's conditions of registration.

Subsection 9 of the Code of Ethics as it relates to eight (8) instances when Top Hand, and/or salespersons on its behalf, traded from a place other than its registered premises. This was contrary to section 28(4) of Regulation 333/08 and a breach of Top Hand's conditions of registration.

Subsection 9 of the Code of Ethics as it relates to one (1) instance when Top Hand received new sources of funding without first obtaining the written approval of the Registrar, in breach of its conditions of registration.

Subsection 7 of the Code of Ethics as it relates to Top Hand's failure to have a consignment agreement in writing and to make written disclosures in the contract contrary to the section 45 of Regulation 333/08.

Yang Zheng agrees that she has contravened the following subsections of the Code of Ethics, Regulation 332/08:

Subsections 6 and 9 of the Code of Ethics by causing Top Hand to breach its conditions of registration and to contravene the Act, Regulation 333/08 and the Code of Ethics.

Yun Zheng agrees that he has contravened the following subsections of the Code of Ethics, Regulation 332/08:

Subsections 6 and 9 of the Code of Ethics, by, while an officer and director of Top Hand, failing to take reasonable care to prevent Top Hand from breaching its conditions of registration and to contravene the Act, Regulation 333/08 and the Code of Ethics.

SUMMARY OF AGREEMENT

The parties to this proceeding agree that:

BACKGROUND

1. Top Hand Inc. o/a Autogather ("Top Hand") has been registered as a motor vehicle dealer under the Act since on or about May 7, 2018.
2. From the date it was first registered under the Act until approximately February 28, 2023, Autogather was registered in the wholesaler subclass of dealer. It was generally prohibited pursuant to section 21 of Ontario Regulation 333/08 from trading in motor vehicles with anyone who was not also registered as a motor vehicle dealer or a motor vehicle auction.
3. Yang Zheng was first registered as a motor vehicle salesperson under the Act on or about May 7, 2018. Since that date, he has been registered as a salesperson for Top Hand.
4. Yun Zheng was first registered as a motor vehicle salesperson under the Act on or about May 7, 2018. Since that date, she has been registered as a salesperson for Top Hand.
5. Yang Zheng and Yun Zheng are brother and sister of each other.
6. At all material times, Yang Zheng and Yun Zheng have been officers and directors of Top Hand and Yang Zheng has been its General Manager and the person-in-charge of its day to day activities.

2017 Conviction

7. Prior to Top Hand being registered as a motor vehicle dealer, it was charged with acting as a motor vehicle dealer while not being registered to do so, contrary to section 4(1)(a) of the Act. On or about August 23, 2017, Top Hand was found guilty and convicted, and was sentenced to pay a fine of \$15,000.

Conditions of Registration

8. For the entire time it has been registered, Top Hand has had conditions attached to its registration as a motor vehicle dealer.
9. Clause 8 of its Terms and Conditions of registration prohibit Top Hand from trading in motor vehicles with anyone other than a registered motor vehicle dealer or a wholesale auction.
10. Clause 9 prohibits Top Hand from operating, or inviting the public to trade with it, at any place other than the location approved by the Registrar.

11. Clause 10 requires Top Hand to obtain the Registrar's written approval before it changes the location where it trades in motor vehicles.
12. Clause 20 of its Terms and Conditions prohibit Top Hand from receiving new sources of financing without the prior approval of the Registrar, except for financing from a corporation registered under the *Loan and Trusts Corporations Act*, the *Bank Act* or from a credit union to which the *Credit Union and Caisses Populaires Act* applies.

TOP HAND'S VIOLATIONS OF THE CODE OF ETHICS

13. On or about January 24, 2023, an Inspector under the Act conducted an inspection of Top Hand's books & records. This inspection identified contraventions of the Act and breaches of Top Hand's conditions of registration, as particularized below.

Trading Outside of Wholesaler Class

14. On or about September 15, 2022, Yang Zheng, on behalf of Top Hand, purchased a 2022 Porsche Cayenne (VIN: WP1BG2AY6NDA56060) from a seller who was not another motor vehicle dealer or a motor vehicle auction. This was contrary to section 21 of Ontario Regulation 333/08 and a breach of clause 8 of Top Hand's conditions of registration. This was a violation of section 9 of the Code of Ethics.
15. Yang Zheng, on behalf of Top Hand, also traded the motor vehicles listed below to or from persons who were not motor vehicle dealers or motor vehicle auctions. These trades were also contrary to section 21 of Ontario Regulation 333/08 and breaches of clause 8 of Top Hand's conditions of registration. This was a violation of section 9 of the Code of Ethics.
 - a) 2018 Mercedes (VIN: WDC0G4KB8JV023512) (trade occurred on or about September 15, 2022)
 - b) 2019 Audi (VIN: WAUV2AF24KN052815) (trade occurred on or about August 26, 2022)
 - c) 2019 Maserati (VIN: ZN661XUS8KX333969) (trade occurred on or about July 1, 2022)
 - d) 2020 Mercedes (VIN: W1NYC7HJ2LX351707) (trade occurred on or around August 5, 2022)
 - e) 2020 Mercedes (VIN: W1NYC7HJ6LX342881) (trade occurred on or about August 20, 2022)
 - f) 2022 Rolls Royce (VIN: SLATV4C01NU214763) trade occurred on or about August 24, 2022)
 - g) 2022 Tesla (VIN: 7SAYGDEE4NF538223) trade occurred on or about September 20, 2022)

Trading "Off-Premises"

16. When the above-listed trades took place, Top Hand's registered premises were located at Unit 3500, 2 Bloor Street East, Toronto, Ontario. However, the trades occurred at 146 Willowdale Ave, Toronto, Ontario which was the location of a separate business owned by Yang Zheng. This business was not registered under the Act.

17. By trading at a location other than the place authorized by Top Hand's registration under the Act, Top Hand contravened section 28(4) of Ontario Regulation 333/08 and breached clauses 9 and 10 of its Conditions of Registration. This was a violation of section 9 of the Code of Ethics.

Receiving New Sources of Financing Without Registrar's Approval

18. The January 2023 inspection of Top Hand's books and records revealed that Top Hand had received a loan of \$150,000 from NSR Toronto Holdings. This lender is not a corporation registered under the *Loan and Trusts Corporations Act*, the *Bank Act*, or a credit union to which the *Credit Union and Caisses Populaires Act* applies.
19. Top Hand did not request the Registrar's approval for this new financing, nor was such approval given. Top Hat therefore breached clause 20 of its conditions of registration. This was a violation of section 9 of the Code of Ethics.

Failure to Comply with Requirements for Written Contracts Relating to Consignment Sales

20. The 2022 Porsche Cayenne was traded by Yang Zheng on behalf of Top Hand from a consumer to a purchaser on a consignment basis. Top Hand failed to comply with the requirements of section 45 of Ontario Regulation 333/08, which required it to, among other things, put the consignment agreement in writing, and made the written disclosures in the contract required by that section. This was a violation of section 7 of the Code of Ethics.

YANG ZHENG and YUN ZHENG's VIOLATIONS OF THE CODE OF ETHICS

21. As particularized above, Yang Zheng caused Top Hand to breach its conditions of registration, and to contravene the Act and the Code of Ethics, and thereby personally violated sections 6 and 9 of the Code of Ethics.
22. Yun Zheng, also an officer and director of Top Hand, failed to take reasonable care to prevent Top Hand from contravening the Act, and thereby violated sections 6 and 9 of the Code of Ethics.

Decision of the Reviewing Panel

Having reviewed and considered the Agreed Statement of Facts, as well as the additional submissions provided by the Parties, the Reviewing Panel is satisfied that the facts as set out in the Agreed Statement of Facts support the allegations that the Dealer has breached section 9 of the OMVIC Code of Ethics, and Yang Zheng and Yun Zheng have breached sections 6 and 9, as set out in Ontario Regulation 332/08, made under the *Motor Vehicle Dealers Act, 2002*.

Based on the written submissions, the panel is not satisfied that the penalty will meet the requirement of specific deterrence or public interest; however, it is the maximum allowable under the statute, as penalty was not separated out for each registrant and therefor:

The Reviewing Panel also agrees with the Parties' Joint Submission on Penalty and determines that the penalty is in the public interest and serves as a general and specific deterrence. Accordingly, the Reviewing panel makes the following Order:

Top Hand, Yang Zheng and Yun Zheng agree to pay a fine **on a joint and several basis** in the amount of \$25,000 by no later than 90 (ninety) days from the date of the order of the Discipline Committee disposing of this matter. Top Hand, Yang Zheng, Yun Zheng acknowledge that each may be subject to further proceedings under the MVDA, collection proceedings, and/or other measures under applicable law, should the fine amount not be paid in full by the specified due date.

Dated: March 27, 2024

Ontario Motor Vehicle Industry Council
Discipline Committee

A handwritten signature in black ink, appearing to read 'Joe Wade', written over a horizontal line.

Joe Wade, *Discipline Committee Chair*

On behalf of
Aviva Harari, *Public Member*
Paul Burroughs, *Member*

