

DISCIPLINE COMMITTEE OF THE ONTARIO MOTOR VEHICLE INDUSTRY COUNCIL

**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 -

2345824 ONTARIO INC o/a SUBARU OF NIAGARA

- and -

MARKUS FALKENBERG

- and -

ALEXANDER DIGENIS

- and -

DEVIN KAULBACK

AGREED STATEMENT OF FACTS AND PENALTY

2345824 Ontario Inc o/a Subaru of Niagara has contravened the following:

Sections 9(1) of the Code of Ethics, Ontario Regulation 332/08

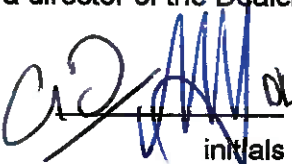
Markus Falkenberg, Alexander Digenis, and Devin Kaulback have contravened the following:

Sections 9(1) and 6(2) of the Code of Ethics, Regulation 332/08

SUMMARY OF AGREEMENT

The parties to this proceeding agree that:

1. 2345824 Ontario Inc o/a Subaru of Niagara (the "Dealer") was first registered as a motor vehicle dealer in or around November 2012.
2. Markus Falkenberg ("Falkenberg") was first registered as a motor vehicle salesperson in or around June 1984. At all material times, Falkenberg was a director of the Dealer.


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3. Alexander Digenis ("Digenis") was first registered as a motor vehicle salesperson in or around May 1987. At all material times, Digenis was a director, as well as the person in charge of the day to day activities, of the Dealer.
4. Devin Kaulback ("Kaulback") was first registered as a motor vehicle salesperson in or around May 21, 2010. At all material times, Kaulback was a sales manager at the Dealer.
5. On or about May 18, 2010 Kaulback successfully completed the Automotive Certification course (the "Course").
6. On or about March 11, 2013, Digenis successfully completed the Course.
7. Included in the Course syllabus is the requirement for salespeople to be registered under the Act.

Publications:

8. Since the Dealer was registered in 2012, OMVIC has issued the following publications reminding dealers of their obligations to ensure their salespeople are registered under the Act:
 - a. September 2013: OMVIC bulletin
 - b. May 2014: OMVIC bulletin
 - c. 2014: Issue 3: Dealer Standard publication
 - d. Winter 2014: Dealer Standard publication

Consumer complaint:

9. Salesperson A was registered to trade in motor vehicles on behalf of the Dealer from on or about December 21, 2012 until his registration terminated on or about June 1, 2018 when he failed to renew it.
10. On or about April 1, 2021, Salesperson A sold a consumer a 2021 Subaru Forrester (VIN JF2SKEFC0MH435756) on behalf of the Dealer while not registered to do so. This is contrary to section 4 of the Act, as well as section 9 of the Code of Ethics.
11. After signing the bill of sale, the consumer discovered that Salesperson A was not registered.
12. On or about April 21, 2021, the consumer contacted OMVIC to complain about Salesperson A having sold a motor vehicle while not being registered to do so.

Salesperson A application:

13. On or about April 7, 2021, Salesperson A submitted an application to again be registered. The application was not approved until on or about June 10, 2021.


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14. On the following dates, Kaulback and/or Digenis were reminded, on behalf of the Dealer, that Salesperson A was prohibited from trading in motor vehicles until such time as his registration application was approved:

- a. April 23, 2021
- b. April 26, 2021
- c. April 29, 2021
- d. May 3, 2021
- e. May 4, 2021
- f. May 5, 2021
- g. May 6, 2021
- h. May 10, 2021
- i. May 20, 2021

OMVIC investigation:

15. On or about June 4, 2021, an OMVIC investigator visited the Dealer, while posing as a member of the public, and observed Salesperson A engaging in trade with customers.

16. The investigator made inquiries about a Subaru Outback (VIN 4S4B1HKD1M3219242).

17. Salesperson A, on behalf of the Dealer, discussed the vehicle's price with the OMVIC investigator. As such, Salesperson A was engaging in trade on behalf of the Dealer without being registered. This is contrary to section 4 of the Act, as well as section 9 of the Code of Ethics.

18. The Dealer has since advised they will be designating a different individual at the Dealer the primary responsibility for the Dealer's day to day compliance with the Act and Regulations, and they will require this person to successfully complete the Automotive Certification course.

Falkenberg's, Digenis', and Kaulback's contravention of the Code of Ethics:

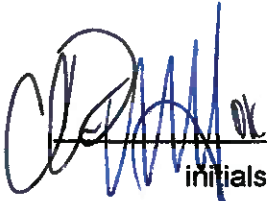
19. In allowing Salesperson A to act as an unregistered salesperson on behalf of the Dealer, Falkenberg, Digenis, and Kaulback, have personally breached sections 6 and 9 of the Code of Ethics.

It is thereby agreed that Falkenberg, Digenis, and Kaulback have contravened the following section of the Code of Ethics, as set out in Regulation 332/08;

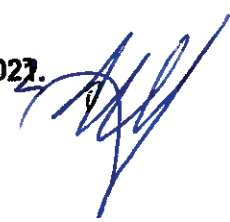
Accountability:

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.

Professionalism


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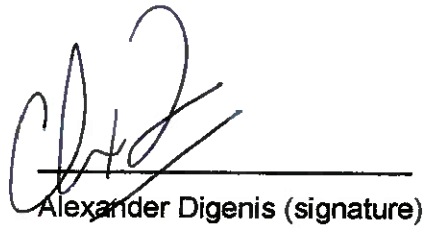
By signature below, I acknowledge that I have read and understand the penalty outlined herein and agree to the said terms and/or conditions and that I exercised my right to be represented by Counsel or agent in this matter. I understand, acknowledge and consent to waive the requirement for a hearing and to request an Order from the Chair of the Discipline Committee that includes this Agreed Statement of Facts and Penalty as a final settlement of this matter.

DATED AT Thornhill THIS 25th DAY OF January, 2021. 


Markus Falkenberg (signature)

By signature below, I acknowledge that I have read and understand the penalty outlined herein and agree to the said terms and/or conditions and that I exercised my right to be represented by Counsel or agent in this matter. I understand, acknowledge and consent to waive the requirement for a hearing and to request an Order from the Chair of the Discipline Committee that includes this Agreed Statement of Facts and Penalty as a final settlement of this matter.

DATED AT THORNHILL THIS 25 DAY OF JAN, 2021. 


Alexander Digenis (signature)


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By signature below, I acknowledge that I have read and understand the penalty outlined herein and agree to the said terms and/or conditions and that I exercised my right to be represented by Counsel or agent in this matter. I understand, acknowledge and consent to waive the requirement for a hearing and to request an Order from the Chair of the Discipline Committee that includes this Agreed Statement of Facts and Penalty as a final settlement of this matter

DATED AT St Catharines THIS 26th DAY OF January, 2021

[Handwritten signature]
OK.
(S)

[Handwritten signature]
Devin Kaulback (signature)

By signature below the Registrar agrees, acknowledges, understands and consents to the final settlement of this matter by way of this Agreed Statement of Facts and Penalty.

DATED AT _____ THIS _____ DAY OF _____, 2021.

Digitally signed by Thaya G
DN: cn=Thaya G, o, ou,
email=thaya.gengatharan@omvic.on.ca, c=CA
Date: 2022.03.01 10:03:59 -05'00'

John Carmichael
Registrar, *Motor Vehicle Dealers Act, 2002*

Pursuant to Rule 1.07, I accept this Agreed Statement of Facts and Penalty from the Parties identified above.

DATED AT Ancaster THIS 22 DAY OF March 20222021.

Paul Burroughs
Paul Burroughs
Chair, Discipline Committee of the
Ontario Motor Vehicle Industry Council

[Handwritten signature]
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It is thereby agreed that Falkenberg, Digenis, Kaulback, and the Dealer have contravened the following section of the Code of Ethics, as set out in Regulation 333/08.

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 \$2,500 no later than **March 31, 2021.**
2. 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 **March 31, 2021.** Future sales staff will be offered the course within 90 days of being retained in this capacity. 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.
3. Falkenberg, Digenis, Kaulback, and the Dealer agree to comply with the Act and Standards of Business Practice, as may be amended from time to time.

By signature below, I acknowledge that I have read and understand the penalty outlined herein and agree to the said terms and/or conditions and that I exercised my right to be represented by Counsel or agent in this matter. I understand, acknowledge and consent to waive the requirement for a hearing and to request an Order from the Chair of the Discipline Committee that includes this Agreed Statement of Facts and Penalty as a final settlement of this matter.

DATED AT Thornhill THIS 25 DAY OF January, 2022

Markus Falkenberg
(please print)

[Signature]
(signature)

I have the authority to bind the corporation:
2345824 Ontario Inc o/a Subaru of Niagara

[Signature]
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