

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 -

T-DOT AUTO SALES INC.

- AND -

YALINI RUTHIRAN

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: August 21, 2018

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

Order:

1. The Dealer is ordered to pay a fine in the amount of \$5,500 no later than **October 15, 2018.**
2. Ruthiran is ordered to successfully complete the Automotive Certification Course (the "Course") no later than **October 15, 2018.**
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 **October 15, 2018.** 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.
4. The Dealer and Ruthiran are ordered 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. T-Dot Auto Sales Inc (the "Dealer") was first registered as a motor vehicle dealer in or around August 2012. Yalini Ruthiran ("Ruthiran") was first registered as a motor vehicle salesperson in or around September 2012. At all material times, Ruthiran was the Director, as well as the Person in Charge, of the Dealer.
2. On or about July 25, 2011, Ruthiran successfully completed the Automotive Certification Course.

Terms and Conditions of Registration:

3. On or about August 23, 2012, Ruthiran executed terms and conditions of registration on behalf of the Dealer.
4. As per condition 6, the Dealer agreed to comply with the Code of Ethics, and Standards of Business Practice, as may be amended from time to time.
5. As per condition 23, the Dealer agreed it is under a positive obligation to disclose in writing on the bill of sale all material facts about the vehicles it sells.

OMVIC publications:

6. In the summer of 2013, OMVIC issued a Dealer Standard publication reminding dealers of the requirement for dealers to provide purchasers with written disclosure of a vehicle's accident repair history ("disclosure").
7. OMVIC further issued the following Dealer Standard publications/bulletins reminding dealers of the disclosure requirements:
 - a. December 2013 (bulletin)
 - b. Dealer Standards: Issue #4 2014
 - c. Dealer Standards: Issue #2 2015
 - d. Dealer Standards: Issue #3 2016
 - e. Dealer Standards: Issue #4 2016

Direct correspondence with Dealer:

8. During an inspection on or about February 18, 2016, a representative of the Registrar reminded the Dealer of its obligation to provide purchasers with written disclosure of all material facts about the vehicles it sells.
9. During an inspection on or about November 14, 2017, a representative of the Registrar found the following non-compliance issues:

Material fact non-disclosure:

- a. On or about October 18, 2016, the Dealer purchased a 2015 Honda Accord , (VIN 1HGCR2F99FA804497) with the following declarations:
 1. Vehicle declared a total loss by the insurer
 2. The manufacturer's warranty has been cancelled
 3. Total distance driven is unknown, but as of 10/6/2016 it was believed to be 34943km. The total distance driven is believed to be higher than the distance indicated. Odometer is: Good

On or about February 14, 2017, Ruthiran, on behalf of the Dealer, sold this vehicle without disclosing any of the information listed above. This is contrary to section 42(4), 42(20), 42(21), and 42(25) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. Moreover, a vehicle history report indicates a previous accident repair claim of \$16,980 which was not disclosed to the purchaser. 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 OMVIC with confirmation from the purchaser that they were aware of their vehicle's history at the time of purchase.

- b. On or about November 1, 2016, the Dealer purchased a 2015 Lexus RX350, (VIN 2T2BK1BA1FC278897) with the following declarations:
 1. Vehicle declared a total loss by the insurer
 2. The manufacturer's warranty has been cancelled
 3. Repair Estimate: \$20686.75
 4. Total distance driven is unknown, but as of 10/13/2016 it was believed to be 37588 km. The total distance driven is believed to be higher than the distance indicated. Odometer is: Good

On or about March 6, 2017, Ruthiran, on behalf the Dealer, sold this vehicle without disclosing any of the information listed above. This is contrary to sections 42(4), 42(19), 42(20), 42(21), and 42(25) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. The Dealer has since provided OMVIC with confirmation from the purchaser that they were aware of their vehicle's history at the time of purchase.

- c. On or about February 23, 2017, the Dealer purchased a 2010 Dodge Caravan, (VIN 2D4RN4DX6AR223015) with the following declarations:

1. Vehicle declared a total loss by the insurer
2. The manufacturer's warranty has been cancelled
3. Repair Estimate: \$13300.88
4. Total distance driven is unknown, but as of 1/20/2017 it was believed to be 191441 km. The total distance driven is believed to be higher than the distance indicated. Odometer is: Good

On or about March 23, 2017, Ruthiran, on behalf the Dealer, sold this vehicle without disclosing any of the information listed above. This is contrary to sections 42(4), 42(19), 42(21), and 42(25) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics.

- d. On or about May 12, 2017, Ruthiran, on behalf of the Dealer, purchased a 2014 Mercedes Benz CLS 550, (VIN WDDLJ9BB7EA106353). This vehicle has 2 separate accident repair histories in amounts of:
1. June 5, 2017: \$11,151
 2. August 15, 2017: \$17,136

On or about September 9, 2017, Ruthiran, on behalf the Dealer, sold this vehicle without disclosing any of the information listed above. 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 OMVIC with confirmation from the purchaser that they were aware of their vehicle's history at the time of purchase.

By failing to comply with the Dealer's terms and conditions of registration, as well as the following sections of the Act:
Regulation 333/08:

42. Additional information in contracts of sale and leases:

4. If the motor vehicle is a used motor vehicle and the registered motor vehicle dealer cannot determine the total distance that the vehicle has been driven but can determine the distance that the vehicle has been driven as of some past date, a statement of that distance and date, together with a statement that the total distance that the vehicle has been driven is believed to be higher than that distance.

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.

20. If the manufacturer's warranty on the motor vehicle was cancelled, a statement to that effect.

21. If the motor vehicle was declared by an insurer to be a total loss, regardless of whether the vehicle was classified as irreparable or as salvage under section 199.1 of the Highway Traffic Act, a statement to that effect.

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 and Ruthiran have breached sections 7 and 9 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.

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 \$5,500 no later than **October 15, 2018**.
1. Ruthiran agrees to successfully complete the Automotive Certification Course (the "Course") no later than **October 15, 2018**.
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 **October 15, 2018**. 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. The Dealer and Ruthiran 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 breached subsections 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 no later than **October 15, 2018**.
2. Ruthiran is ordered to successfully complete the Automotive Certification Course (the "Course") no later than **October 15, 2018**.
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 **October 15, 2018**. 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.

4. The Dealer and Ruthiran are ordered 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", written over a horizontal line.

Paul Burroughs, Chair