

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 -

DON VALLEY VOLKSWAGEN LTD.

- AND -

MICHAEL MARTAN

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: March 10, 2015

Findings: Breach of Sections 4 and 9 of the Code of Ethics

Order:

1. The Dealer is ordered to pay a fine in the amount of \$1,200.00 within 90 days of the date of the Discipline Committee Order.
2. The Dealer is ordered to ensure that the General Manager and the Used Car Manager in a position of authority over sales or related activities at the Dealer will complete the current OMVIC certification course within 90 days of the Discipline Committee Order. It is understood between the parties this clause does not apply to managers who have completed the course or who are otherwise required to do so pursuant to the Act.
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 within 90 days of acceptance of this offer. Future sales staff will be offered the course within 90 days of being retained in this capacity by the Dealer. 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 or who are otherwise required to do pursuant to the Act.
4. The Dealer and Martan 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. Don Valley Volkswagen Ltd, the ("Dealer") was first registered as a motor vehicle dealer in or around January 1983. Michael Martan ("Martan") was first registered as a motor vehicle salesperson in or around January 1994. At all material times, Martan was an officer and director of the Dealer.
2. 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 advertise an all-inclusive vehicle price.
3. Once the Act came into effect, the following Dealer Standard publications further reminded dealers of the requirement to advertise an all-inclusive vehicle price:
 - a. Spring 2010
 - b. Summer 2010
 - c. Spring 2011
 - d. Winter 2013
 - e. Spring 2013
 - f. Fall 2013
 - g. Winter 2014
4. Furthermore, OMVIC issued the following bulletins which also reminded dealers of the requirement to advertise an all-inclusive price:
 - a. January 2010 (2 separate publications)
 - b. April 2010 (2 separate publications)
 - c. February 2012
 - d. August 2012
 - e. April 2013
 - f. June 2014 (2 separate publications)
5. On or before September 8, 2014, an advertisement was placed by or on behalf of the Dealer for a 2013 Volkswagen Jetta, stock #3762A with an advertised selling price of \$27,688. On or about September 8, 2014, a representative of the Registrar attended the Dealer in her own capacity as a consumer to purchase said vehicle. The Dealer then added a mandatory administration/documentation fee of \$385.00 on to the selling price



of the vehicle. As such the advertised vehicle selling price was not all-inclusive. This is contrary to sub section 36(7) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics. The dealer has since offered to refund the cost of the administration fee.

By failing to comply with the following sections of the *Motor Vehicle Dealers Act, 2002*:

Regulation 333/08:

36 (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 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. O. Reg. 333/08, s. 36 (7).

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

4. A registrant shall be clear and truthful in describing the features, benefits and prices connected with the motor vehicles in which the registrant trades and in explaining the products, services, programs and prices connected with those vehicles.

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 \$1,200.00 within 90 days of the date of the Discipline Committee Order.
2. The Dealer agrees that the General Manager and the Used Car Manager in a position of authority over sales or related activities at the Dealer will complete the current OMVIC certification course designated by the Registrar (the "course"), within 90 days of the Discipline Committee Order. It is understood between the parties this clause does not apply to managers who have completed the course or who are otherwise required to do so pursuant to the Act.
3. 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 within 90 days of acceptance of this offer. Future sales staff will be offered the course within 90 days of being retained in this capacity by the Dealer. 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 or who are otherwise required to do pursuant to the Act.



4. The Dealer and Martan 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 and Martan breached subsections 4 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 \$1,200.00 within 90 days of the date of the Discipline Committee Order.
2. The Dealer is ordered to ensure that the General Manager and the Used Car Manager in a position of authority over sales or related activities at the Dealer will complete the current OMVIC certification course within 90 days of the Discipline Committee Order. It is understood between the parties this clause does not apply to managers who have completed the course or who are otherwise required to do so pursuant to the Act.
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 within 90 days of acceptance of this offer. Future sales staff will be offered the course within 90 days of being retained in this capacity by the Dealer. 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 or who are otherwise required to do pursuant to the Act.
4. The Dealer and Martan 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



Catherine Poultney, Chair

