

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

BETWEEN :

REGISTRAR, *MOTOR VEHICLE DEALERS ACT, 2002*

- AND -

1689086 ONTARIO INC. o/a WOODSTOCK HYUNDAI

- AND -

Jerry Hussar

Date of Hearing: August 18, 2023

Date of Decision: August 31, 2023

Findings: Breach of Sections 4(2) and 9(1) of the Code of Ethics by the Dealer
Breach of Sections 6(2) and 9(1) of the Code of Ethics by Jerry Hussar

Order:

1. The Dealer is ordered to pay a fine in the amount of \$4,250 no later than October 31, 2023.
2. Hussar is ordered to pay a fine in the amount of \$500 no later than October 31, 2023.
3. Hussar is ordered to successfully complete the MVDA Key Elements course no later than October 31, 2023.
4. The Dealer is ordered to ensure all sales staff review the OMVIC August 2017 advertising webinar, no later than October 31, 2023.
5. The Dealer is ordered to offer all current and future sales staff the opportunity to complete the Automotive Certification Course (the "Course"). The Dealer will provide confirmation that current staff have been offered the Course no later than October 31, 2023. 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.
6. The Dealer and Hussar agree to comply with the Act and Standards of Business Practice, as may be amended from time to time.

Introduction

This hearing was held virtually by videoconference. The individual registrant, Jerry Hussar, was present and represented both himself and 1689086 Ontario Inc. which operates as Woodstock Hyundai (the "Dealer") (Mr. Hussar and the Dealer will be referred to collectively as "the Respondents"). OMVIC was represented by Counsel, Rishi Nageshar. Edward Marrocco was Independent Legal Counsel to the Panel.

The matter proceeded as an uncontested hearing. Prior to the hearing, the parties reached consensus on an Agreed Statement of Facts (ASF) and a Joint Submission on Penalty (JSOP). Counsel for OMVIC confirmed that the registrar would not be seeking a finding with respect to allegation 10(b) of the Notice of Complaint. It was agreed that this allegation would be marked as withdrawn going forward.

The Allegations

The allegations in this matter were contained in a Notice of Complaint, dated February 3, 2023, which was marked as Exhibit 1. The Notice of Complaint raised allegations of non-compliant vehicle price advertising contrary to section 36(7) of Ontario Regulation 333/08. The allegations related to four vehicles but particulars in respect of one of the vehicles was withdrawn at the outset by counsel for OMVIC.

The ASF, signed June 29, 2023, was entered as Exhibit 2. A response to the Notice of Complaint from the respondents, dated February 7, 2023, was entered as Exhibit 3. The JSOP, also signed June 29, 2023, was marked as Exhibit 4.

Respondents' Plea

The Respondents were arraigned at the outset of the hearing and admitted to all allegations contained in the Notice of Complaint but for subparagraph 10(b) which was withdrawn. An oral plea inquiry was conducted during arraignment.

The Evidence

As noted above, the evidence in the proceeding was tendered by of the ASF marked as Exhibit 2 which provides as follows:

Background

1. 1689086 Ontario Inc o/a Woodstock Hyundai (the "Dealer") was first registered as a motor vehicle dealer since in or around March 2006.
2. Jerry Hussar ("Hussar") was first registered as a motor vehicle salesperson in or around March 1992. At all material times, Hussar has been an Officer, as well as the person in charge of the day-to-day activities at the Dealer.

OMVIC registrant education re: all-in pricing

3. Since the Act was proclaimed, OMVIC has issued various publications and webinars reminding dealers of their obligation to advertise all-inclusive vehicle prices ("all-in pricing"). All of these publications continue to be available on OMVIC's website.

Direct correspondence with Dealer:

4. By email dated March 29, 2010, the Dealer was reminded of its all-in pricing obligations.
5. By letter dated March 31, 2010, the Dealer again was reminded of its all-in pricing obligations.
6. By email dated November 9, 2015, Hussar was reminded of the Dealer's all-in pricing obligations.
7. During an inspection on or about February 4, 2016, all-in pricing was discussed with Hussar.
8. By email dated February 27, 2018, Hussar was again reminded of the Dealer's all-in pricing obligations.
9. By email dated July 25, 2019, Hussar was again reminded of the Dealer's all-in pricing obligations.

Dealer's Contravention of the Code of Ethics

10. During an inspection on or about July 25, 2022, the following areas of noncompliance were found:
 - a. On or before June 27, 2022, the Dealer advertised a 2014 Toyota Prius (VIN: JTDKN3DU0E1770757) with a selling price of \$23,192 plus tax and licensing. On or about June 27, 2022, the Dealer sold this vehicle for \$633 above the advertised price. Therefore, the advertised price was not all-inclusive, contrary to section 36(7) of ON Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics. The Dealer has undertaken to offer to return to the purchaser the amount they were overcharged for their vehicle and provide proof of the same to the Registrar on or by July 31, 2023.
 - b. On or before June 30, 2022, the Dealer advertised a 2017 Kia Sportage (VIN: KNDPRCA62H7237391) with a selling price of \$23,998 plus tax and licensing. On or about June 30, 2022, the Dealer sold this vehicle for \$609 above the advertised price. Therefore, the advertised price was not all-inclusive, contrary to section 36(7) of ON Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics. The Dealer has undertaken to offer to return to the purchaser the amount they were overcharged for their vehicle and provide proof of the same to the Registrar on or by July 31, 2023.
 - c. On or before August 2, 2022, the Dealer advertised a 2015 Ford Explorer (VIN: KNDPRCA62H7237391) with a selling price of \$24,485 plus tax and licensing. On or about August 2, 2022, the Dealer sold this vehicle for \$599 above the advertised price. Therefore, the advertised price was not all inclusive, contrary to section 36(7) of ON Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics. The Dealer has undertaken to offer to return to the purchaser the amount they were overcharged for their vehicle and provide proof of the same to the Registrar on or by July 31, 2023.

Hussar's Contraventions of the Code of Ethics

11. Hussar failed to ensure that the Dealer conducted its business in compliance with the Act and Code of Ethics and thus personally contravened sections 6 and 9 of the Code of Ethics.

By failing to comply with the following section of the ON Regulation 333/08:

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 section of the Code of Ethics, as set out in ON Regulation 333/08.

Disclosure and marketing

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.

It is thereby agreed that Hussar has contravened the following section of the Code of Ethics, as set out in ON 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.

It is thereby agreed that the Dealer and Hussar have contravened the following section of the Code of Ethics, as set out in ON Regulation 333/08.

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.

Decision of the Panel

Having reviewed the evidence and heard the submissions of the parties, the Panel was satisfied that the Respondents had breached the Code of Ethics as alleged in the Notice of Complaint and as admitted in the ASF. Specifically, the Panel held that the Dealer had breached sections 4(2) and 9(1) of the Code of Ethics, and Mr. Hussar, in his personal capacity, had breached Sections 6(2) and 9(1) of the Code of Ethics.

Reasons for Decision

At the outset of the proceedings, the Panel arraigned the Registrant. The Panel conducted a plea inquiry to ensure that the Registrant's admissions in the ASF were voluntary, informed, and unequivocal. The Panel was satisfied that all admissions made by the Respondents were voluntary, informed, and unequivocal.

The Panel was satisfied the evidence in the ASF supports that the Dealer advertised the 2014 Toyota Prius, the 2017 Kia Sportage, and the 2014 Ford Explorer without ensuring the advertised price represented "all in pricing" for these vehicles.

There was no evidence lead with respect to paragraph 10(b) of the Notice of Complaint. The Panel therefore accordingly makes no findings with regard to that allegation.

The Dealer contravened sections 36(7)(a) and 36(7)(b) of the Ontario Regulation 333/08 when it failed to ensure that there was "all in pricing" in the advertisements of these three vehicles. The Panel found accordingly.

The Panel was also satisfied that the evidence contained in the ASF was sufficient to support a finding that Jerry Hussar personally contravened sections 6 and 9 of the Code of Ethics. Mr. Hussar breached sections 36(7)(a) and S36(7)(b) of Ontario Regulation 333/08 when he failed to ensure that there was "all in pricing" in the advertisements of the 2014 Toyota Prius, the 2017 Kia Sportage, and the 2014 Ford Explorer. In his role as Officer and person in charge of day-to-day activities at the Dealership the Panel is satisfied that Mr. Hussar is personally responsible for ensuring that the operations of the Dealership comply with the Ontario regulations and Code of Ethics. His failure to do so demonstrates a lack of professionalism. The Panel found that Mr. Hussar therefore personally breached sections 4(2) Disclosure and Marketing, 6(2) Accountability, and 9(1) Professionalism of the Code of Ethics.

Decision of the Panel on Penalty

As above, the Panel was provided with a JSOP which provided as follows:

1. The Dealer agrees to pay a fine in the amount of \$4,250 no later than **October 31, 2023.**
2. Hussar agrees to pay a fine in the amount of \$500 no later than **October 31, 2023.**
3. Hussar agrees to successfully complete the MVDA Key Elements course no later than **October 31, 2023.**
4. The Dealer agrees to ensure all sales staff review the OMVIC August 2017 advertising webinar, no later than **October 31, 2023.**
5. The Dealer agrees to offer all current and future sales staff the opportunity to complete the Automotive Certification Course (the "Course"). The Dealer will provide confirmation that current staff have been offered the Course no later than **October 31, 2023.** 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.
6. The Dealer and Hussar agree to comply with the Act and Standards of Business Practice, as may be amended from time to time.

The Panel accepted the JSOP and made an order consistent with its provisions before the conclusion of the hearing day.

Reasons for Decision on Penalty

The order proposed in the JSOP is not contrary to the public interest and it does not risk undermining the publicly perceived integrity of this Tribunal. The order addresses the requisite

objectives of penalty including specific and general deterrence and the opportunity for rehabilitation. The Panel acknowledges the cooperation of Mr. Hussar and the Dealer in arriving at an agreed statement of facts and joint submission on penalty as a mitigating factor. The Panel is not aware of any prior discipline as against either of the Respondents. Lastly, the Panel reviewed the cases contained in the Book of Authorities provided by counsel and is satisfied that the order proposed in the JSOP is not inconsistent with other decisions of the Discipline Committee.

Given the above, the Panel found no compelling reason to reject the JSOP. The matter certainly did not rise to the level of being contrary to the public interest. The Panel is mindful of the jurisprudence setting out the high threshold required to depart from a joint submission and confirms that that threshold was not met in this matter.

Ontario Motor Vehicle Industry Council
Discipline Committee



Deb Mattina, Chair
Jon Lemaire, Vice Chair
Wally Pietraszko, Vice Chair