

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 -

2257078 ONTARIO LTD o/a PAUL COFFEY KIA

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: January 31, 2018

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

Order:

1. The Dealer is ordered to pay a fine in the amount of \$5,000 no later than **December 8, 2017**.
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 within 90 days of the date of the Discipline Committee Order. 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 after January 1, 2009, or who are otherwise required to do so pursuant to the Act.
3. The Dealer agrees 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. 2257078 Ontario Ltd o/a Paul Coffey Kia (the "Dealer") was first registered as a motor vehicle dealer in or around January 2011.
2. The salesperson involved in the transaction was first registered as a motor vehicle salesperson in or around February 2003. At all material times, he was employed in this capacity by the Dealer.
3. Whybuynemotors Ltd is a registered motor vehicle dealer.
4. On or about December 12, 2016, a consumer negotiated the purchase of a 2013 Nissan Altima (VIN 1N4AL3APXDN428374) from Whybuynemotors Ltd for a total price of \$12,000 plus HST. An initial bill of sale was executed between Whybuynemotors Ltd and the consumer reflecting the agreed upon terms of purchase. The consumer paid for the licensing of the vehicle separately. The consumer was referred by Whybuynemotors Ltd to the Salesperson to obtain financing for this purchase.
5. The transaction occurred as follows:
 - a. The Salesperson was able to obtain financing for the consumer. Whybuynemotors Ltd sold the vehicle to the Dealer, who in turn sold the vehicle to the Consumer.
 - b. On or about December 13, 2016, the Consumer purchased the vehicle from the Dealer. The selling price of the vehicle had been increased to \$13,210 and the following additional charges were added to the consumer's bill of sale:
 - i. \$1499 Admin/GAP Protection
 - ii. \$399 Delivery
 - iii. \$150 gas
 - iv. \$150 licensing

The total price of the vehicle was now \$15,408 plus HST. This vehicle sale was non-compliant with industry regulations for the following reasons:

- v. The Consumer's copy of the bill of sale does not indicate the \$1499 administration fee includes GAP insurance. This is contrary to section

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40(2) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics.

- vi. Moreover, the Dealer charged the Consumer \$399 for delivery, \$150 for gas, and \$150 for licensing but did not deliver the vehicle to the Consumer. The Consumer took delivery of the vehicle from Whybuynemotors Ltd. At no time was the vehicle in the possession of the Dealer. As such, the Dealer charged the Consumer for costs not incurred; this is contrary to sections 4 and 9 of the Code of Ethics.
 - c. Ministry of Transportation records indicate the vehicle was transferred from the Whybuynemotors Ltd directly to the Consumer, without being registered to the Dealer. This is despite the fact Whybuynemotors Ltd sold the vehicle to the Dealer and the Dealer was the end retail seller. As such the Dealer failed to comply with its obligations under section 11(2) of the Highway Traffic Act, 1990, as well as section 9 of the Code of Ethics.
6. After OMVIC became involved in the Consumer's complaint, the Dealer offered partial restitution to the Consumer with respect to the additional costs that were charged.
 7. The Dealer permitted the Salesperson to engage in conduct on their behalf which contravenes the Act, Regulations, as well as sections 4 and 9 of the Code of Ethics.
 8. The Salesperson involved is no longer employed by the Dealer.
 9. The Dealer has since agreed to refund the Consumer the \$2,198 in extra charges that the Consumer paid.

By failing to comply with the following:

Highway Traffic Act, 1990

11(2) Every person shall, within six days after becoming the owner of a motor vehicle or trailer for which a permit has been issued, apply to the Ministry, on the form provided therefor, for a new permit for the vehicle.

Motor Vehicle Dealers Act, 2002

Regulation 333/08

40(2) A registered motor vehicle dealer shall ensure that any contract that the dealer enters into to sell a used motor vehicle to a purchaser who is not another registered motor vehicle dealer includes, in a clear, comprehensible and prominent manner, the following:

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An itemized list of the charges that the purchaser is required to pay under the contract to conclude the transaction, including charges for freight, charges for inspection before delivery of the vehicle, fees and levies.

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 \$5,000 no later than **December 8, 2017**.
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 within 90 days of the date of the Discipline Committee Order. 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 after January 1, 2009, or who are otherwise required to do so pursuant to the Act.
3. The Dealer agrees to comply with the Act and Standards of Business Practice, as may be amended from time to time.

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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 section 4 and 7 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 \$5,000 no later than **December 8, 2017**.
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 within 90 days of the date of the Discipline Committee Order. 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 after January 1, 2009, or who are otherwise required to do so pursuant to the Act.
3. The Dealer agrees 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



Paul Burroughs, Chair

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 -

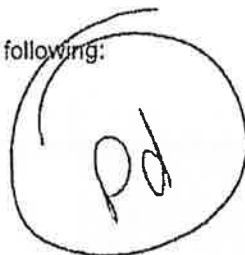
2257078 ONTARIO LTD o/a PAUL COFFEY KIA

AGREED STATEMENT OF FACTS AND PENALTY

2257078 Ontario Ltd o/a Paul Coffey Kia has breached the following:

Section 4 of the Code of Ethics, Regulation 332/08

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



SUMMARY OF AGREEMENT

The parties to this proceeding agree that:

1. 2257078 Ontario Ltd o/a Paul Coffey Kia (the "Dealer") was first registered as a motor vehicle dealer in or around January 2011.
2. [REDACTED] (the "Salesperson") was first registered as a motor vehicle salesperson in or around February 2003. At all material times, he was employed in this capacity by the Dealer.
3. Whybuynemotors Ltd is a registered motor vehicle dealer.
4. On or about December 12, 2016, a consumer negotiated the purchase of a 2013 Nissan Altima (VIN 1N4AL3APXDN428374) from Whybuynemotors Ltd for a total price of \$12,000 plus HST. An initial bill of sale was executed between Whybuynemotors Ltd and the consumer reflecting the agreed upon terms of purchase. The consumer paid for the licensing of the vehicle separately. The consumer was referred by Whybuynemotors Ltd to the Salesperson to obtain financing for this purchase.
5. The transaction occurred as follows:
 - a. The Salesperson was able to obtain financing for the consumer. Whybuynemotors Ltd sold the vehicle to the Dealer, who in turn sold the vehicle to the Consumer.


Registrar's Initials

- b. On or about December 13, 2016, the Consumer purchased the vehicle from the Dealer. The selling price of the vehicle had been increased to \$13,210 and the following additional charges were added to the consumer's bill of sale:
- i. \$1499 Admin/GAP Protection
 - ii. \$399 Delivery
 - iii. \$150 gas
 - iv. \$150 licensing

The total price of the vehicle was now \$15,408 plus HST. This vehicle sale was non-compliant with industry regulations for the following reasons:

- v. The Consumer's copy of the bill of sale does not indicate the \$1499 administration fee includes GAP insurance. This is contrary to section 40(2) of Regulation 333/08, as well as sections 4, 7, and 9 of the Code of Ethics.
 - vi. Moreover, the Dealer charged the Consumer \$399 for delivery, \$150 for gas, and \$150 for licensing but did not deliver the vehicle to the Consumer. The Consumer took delivery of the vehicle from Whybuynemotors Ltd. At no time was the vehicle in the possession of the Dealer. As such, the Dealer charged the Consumer for costs not incurred; this is contrary to sections 4 and 9 of the Code of Ethics.
- c. Ministry of Transportation records indicate the vehicle was transferred from the Whybuynemotors Ltd directly to the Consumer, without being registered to the Dealer. This is despite the fact Whybuynemotors Ltd sold the vehicle to the Dealer and the Dealer was the end retail seller. As such the Dealer failed to comply with its obligations under section 11(2) of the Highway Traffic Act, 1990, as well as sections 7, and 9 of the Code of Ethics.
6. After OMVIC became involved in the Consumer's complaint, the Dealer offered partial restitution to the Consumer with respect to the additional costs that were charged.
7. The Dealer permitted the Salesperson to engage in conduct on their behalf which contravenes the Act, Regulations, as well as sections 4, 7, and 9 of the Code of Ethics.
8. The Salesperson involved is no longer employed by the Dealer.
9. The Dealer has since agreed to refund the Consumer the \$2,198 in extra charges that the Consumer paid.



Registrant's Initials

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40(2) A registered motor vehicle dealer shall ensure that any contract that the dealer enters into to sell a used motor vehicle to a purchaser who is not another registered motor vehicle dealer includes, in a clear, comprehensible and prominent manner, the following:

An itemized list of the charges that the purchaser is required to pay under the contract to conclude the transaction, including charges for freight, charges for inspection before delivery of the vehicle, fees and levies.

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.

7. 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.

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:

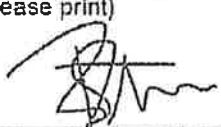
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3. The Dealer agrees to comply with the Act and Standards of Business Practice, as may be amended from time to time.



Registrant's Initials

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.

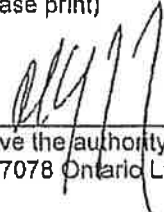
DATED AT Toronto THIS 18th DAY OF January, ~~2017~~²⁰¹⁸ AK

(please print)


(signature)

DATED AT Toronto THIS 18th DAY OF January, 2017⁸ AK


Paul Coffey
(please print)



I have the authority to bind the corporation:
2257078 Ontario Ltd o/a Paul Coffey Kia

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 Toronto THIS 18th DAY OF Jan, 2017⁸



Laura Halbert
Deputy 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 Anaconda THIS 2nd DAY OF February, 2017⁸



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



Registrant's Initials

ORIGIN ID:YFHB (416) 226-3661
DAVID DALLY
OMVIC
65 OVERLEA BLVD
SUITE 300
TORONTO, ON M4H1P1
CANADA CA

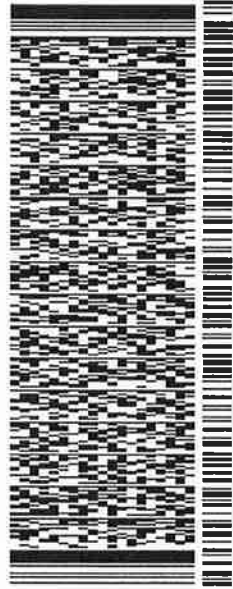
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CAD: 100978087/IN/ET 3980
BILL SENDER

TO PAUL COFFEY
PAUL COFFEY KIA
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BOLTON ON L7E1S7
(905) 951-7400
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FedEx won't be liable for loss, damage, delay, shortage, mis-delivery, non-delivery, misinformation or failure to provide information in connection with your shipment caused by events FedEx cannot control, including but not limited to, acts of God, perils of the air, weather conditions, acts of public enemies, war, strikes, civil commotions, or acts or omissions of public authorities (including customs and health officials) with actual or apparent authority. You should contact an insurance agent or broker if insurance coverage is desired. We do not provide insurance coverage of any kind. **NO WARRANTIES:** We make no warranties, express or implied. **CLAIM FOR LOSS, DAMAGE OR DELAY:** ALL CLAIMS MUST BE MADE IN WRITING AND WITHIN STRICT TIME LIMITS. SEE OUR CURRENT WORLDWIDE SERVICE GUIDE AND ANY APPLICABLE TARIFF FOR DETAILS. We must receive your written notice of a claim for damage or delay, including perishable and spoilage damage claims due to late or delayed delivery, within 21 days after we deliver your shipment and in the case of loss, shortage, mis-delivery, non-delivery, misinformation or failure to provide information, within 90 days after we accept the shipment for carriage. The right to claim damages against us shall be extinguished unless an action is brought within two years from the date of delivery of the shipment or from the date on which the shipment should have been delivered or from the date on which the carriage stopped. Within 90 days after you have notified us of your claim, it must be documented by sending us all relevant information regarding your claim. FedEx is not obliged to act on any claim until all transportation charges have been paid. The claim amount may not be deducted from these charges. If the recipient accepts the shipment without noting any damage on the delivery record, FedEx will assume the shipment was delivered in good condition. In order for us to consider a claim for damage, this criteria, original shipping carton and packing must be made available to us for inspection at the delivery location and you must retain all such items until the claim is concluded. **RESPONSIBILITY FOR PAYMENT:** Even if you give us different payment instructions, you, the shipper, will always be primarily responsible for all charges, including transportation charges, and all duties, assessments, governmental penalties and fees, taxes, and FedEx's legal fees and costs related to shipments tendered under this Agreement. You also will be responsible for any costs FedEx may incur in returning your shipments to you or warehousing them pending disposition. **MANDATORY LAW:** Insofar as any provisions contained or referred to in this Agreement may be contrary to any applicable laws, government regulations, orders or requirements, such other provisions shall remain in effect as a part of this Agreement to the extent that they are not overridden. The validity or enforceability of any provisions of this Agreement shall not affect any other part hereof. The parties expressly agree that this Agreement be drawn up in the English language. **FEDERAL EXPRESS CANADA LTD.,** Head Office, 5555 Eglinton Drive, Mississauga, ON L4V 1R6.