

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 -

ERIN DODGE CHRYSLER LTD

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: July 24, 2017

Findings: Breach of Section 7 of the Code of Ethics

Order:

1. The Dealer is ordered to pay a fine in the amount of \$4,500 within 90 days of the date of the Discipline Committee Order.
2. 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 the date of the Discipline Committee Order. 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 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. Erin Dodge Chrysler Ltd (the "Dealer") was first registered as a motor vehicle dealer in or around 1982. Mark Keenan ("Keenan") was first registered as a motor vehicle salesperson in or around September 1983. At all material times, Keenan was an officer of the Dealer.

OMVIC publications:

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 Dealer Act, 2002 (the "Act") came into effect. Included in the bulletin was the requirement for dealers to advertise all inclusive vehicle prices in advertisements ("advertising").
3. After the Act was proclaimed, OMVIC further issued the following Dealer Standard publications reminding dealers of their advertising obligations:
 - a. Spring 2010
 - b. Summer 2010
 - c. Spring 2011
 - d. Winter 2013
 - e. Spring 2013
 - f. Fall 2013
 - g. Winter 2014 (Issue 1)
 - h. Spring 2014 (Issue 2)
 - i. Issue 4 2014
 - j. Issue 1 2016
4. Furthermore, OMVIC issued the following dealer bulletins which also reminded dealers of the requirement for dealers of their advertising obligations:

- b. April 2010
- c. August 2012
- d. April 2013
- e. April 2014
- f. June 2014
- g. April 2015

Direct correspondence:

5. By email dated February 22, 2011, a representative of the Registrar reminded the Dealer of their obligation to ensure advertised vehicle prices are all-inclusive.

Non-compliance:

6. During an inspection on or about December 15, 2016, a representative of the Registrar found the following non-compliance issues:
 - a. On or before October 22, 2016, the Dealer advertised a 2015 Jeep Cherokee (Stock #P11270) with a selling price of \$23,500. On or about October 22, 2016, the Dealer sold this vehicle and added \$1033 in additional charges. As such, the advertisement did not promote an all-inclusive price. This is contrary to section 36(7) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics. After the inspection, and prior to the Notice of Complaint being issued, the Dealer refunded the purchaser the additional charges.
 - b. On or before November 8, 2016, the Dealer advertised a 2016 Jeep Cherokee (Stock #N6521) with a selling price of \$24,595. On or about November 8, 2016, the Dealer sold this vehicle and added \$1796.30 in additional charges. As such, the advertisement did not promote an all-inclusive price. This is contrary to section 36(7) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics. After the inspection, and prior to the Notice of Complaint being issued, the Dealer refunded the purchaser the additional charges.
 - c. On or before November 18, 2016, the Dealer advertised a 2016 Dodge Journey (Stock #N7293) with a selling price of \$26,995. On or about November 18, 2016, the Dealer sold this vehicle and added \$1070 in additional fees. As such, the advertisement did not promote an all-inclusive price. This is contrary to section 36(7) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics. After the inspection, and prior to the Notice of Complaint being issued, the Dealer refunded the purchaser the additional charges.
7. The Dealer has since arranged for all staff to attend the OMVIC advertising seminar.

By failing to comply with the following sections of the Motor Vehicle Dealers Act, 2002:
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 breached the following sections of the Code of Ethics, as set out in Regulation 332/08:

- 4. 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.

Joint Submission on Penalty

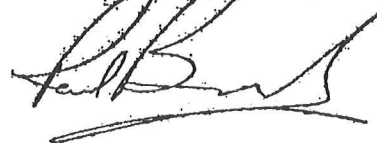
1. The Dealer agrees to pay a fine in the amount of \$4,500 within 90 days of the date of the Discipline Committee Order.
2. The Dealer is ordered to offer all current and future sales staff the opportunity to complete the course. Current sales staff will be offered the course within 90 days of the date of the Discipline Committee Order. 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 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.

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 4 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 \$4,500 within 90 days of the date of the Discipline Committee Order.
2. 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 the date of the Discipline Committee Order. 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 or who are otherwise required to do so pursuant to the Act.
3. The Dealer 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



Paul Burroughs, Chair