

**DISCIPLINE COMMITTEE OF THE
ONTARIO MOTOR VEHICLE INDUSTRY COUNCIL**

PANEL:	Caroline Brett, Chair	Public Member
	Wally Pietraszko	Registrant
	Joe Wade	Registrant

DECISION AND REASONS

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 :

Appearances¹:

REGISTRAR, MOTOR VEHICLE DEALERS ACT, 2002)	Andrea Korth and Hussein Panju for the Registrar
- and -)	
2343654 ONTARIO INC 401 DIXIE NISSAN/401 DIXIE INFINITI)	
and)	Patrick Copeland for the Registrants
ALI FAHEEM)	
)	
)	

Hearing Date: November 24, 2022

Date of Decision: November 24, 2022

¹ Independent legal counsel to the Panel is Mr. Edward Marrocco.

Findings: Ali Faheem – Breaches of Sections 9(1) and 6(2) of the Code of Ethics, Ontario Regulation 332/08

2343654 Ontario Inc o/a 401 Dixie Nissan/401 Dixie Infiniti – Breach of Section 9(1) of the Code of Ethics, Ontario Regulation 332/08

ORDER

1. The Dealer agrees to pay a fine in the amount of \$20,000 no later than **March 31, 2023.**
2. Faheem agrees to pay a fine in the amount of \$3,500 no later than **March 31, 2023.**
3. Faheem agrees to successfully complete the Automotive Certification course (the “Course”), no later than **March 31, 2023.**
4. 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 **May 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*.
5. The Dealer and Faheem 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 via video conference. The Registrant, Mr. Ali Faheem was present and represented by counsel, Patrick Copeland. Ms. Andrea Korth was present on behalf of the OMVIC Registrar and joined by OMVIC's counsel, Mr. Hussein Panju. Independent Legal Counsel to the Panel was Mr. Edward (Ted) Marrocco.

This matter proceeded by way of an Agreed Statement of Facts (ASF), and Joint Submission on Penalty (JSOP).

The Notice of Complaint was marked as Exhibit 1. The ASF was marked as Exhibit 2. The signed JSOP is Exhibit 3. With leave of the Panel, paragraph 14(a) of the ASF was removed and no

findings were sought by OMVIC in respect of that allegation. The Panel made inquiries of the Registrant and was satisfied that all admissions contained in the ASF made on behalf of both the Registrant and the Dealer were voluntary, informed, and unequivocal.

The Panel was satisfied that the facts as set out in the ASF constituted breaches of the Code of Ethics as admitted in that document and found accordingly. In particular, the Dealer was found to have breached section 9(1) and the Registrant was found to have breached sections 6(2) and 9(1) of the Code of Ethics as set out in Ontario Regulation 332/08, made under the *Motor Vehicle Dealers Act, 2002*.

The Panel was also satisfied, for the reasons below, that the JSOP was commensurate with the seriousness of the above breaches and would not undermine the publicly perceived integrity of the Tribunal. An order was made on the record consistent with the terms of the JSOP before the conclusion of the hearing. These are the reasons for the Panel's decision and order.

Agreed Statement of Facts

2343654 Ontario Inc o/a 401 Dixie Nissan/401 Dixie Infiniti has breached the following:

Section 9(1) of the Code of Ethics, Ontario Regulation 332/08

Ali Faheem has breached the following:

Sections 9(1) and 6(2) of the Code of Ethics, Regulation 332/08

SUMMARY OF AGREEMENT

The parties to this proceeding agree that:

1. 2343654 Ontario Inc o/a 401 Dixie Nissan/401 Dixie Infiniti (the "Dealer") was first registered as a motor vehicle dealer in or around November 2012.
2. Ali Faheem ("Faheem") was first registered as a motor vehicle salesperson in about April 2000. Since in or around October 2015, Faheem has been the General Manager and person in charge of the day-to-day activities of the Dealer.

Prior Discipline Committee Orders:**July 16, 2014:**

1. On about February 3, 2014, the Registrar issued a Notice of Complaint against the Dealer for retaining multiple unregistered salespeople, contrary to section 4(3) of the Act as well as section 9 of the Code of Ethics, Ontario Regulation 332/08.
2. On about July 16, 2014, the Discipline Committee issued an Order against the Dealer, pursuant to a negotiated resolution of the above referenced Notice. This Order is attached hereto as Schedule "A".
3. Per condition 1 of the Order, the Dealer was fined \$12,000.
4. Per condition 3 of the Order, the Dealer agreed to comply with the Act and the Standards of Business Practice, as may be amended from time to time.

February 12, 2015:

5. On about December 10, 2014, the Registrar issued a Notice of Complaint against the Dealer for, inter alia, failing to advertise all-inclusive vehicle prices, contrary to section 36(7) of Ontario Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics, Ontario Regulation 332/08.
6. On about February 12, 2015, the Discipline Committee issued an Order against the Dealer, pursuant to a negotiated resolution of the above referenced Notice. This Order is attached hereto as Schedule "B".
7. Per condition 1 of the Order, the Dealer was fined \$6,000.
8. Per condition 4 of the Order, the Dealer agreed to comply with the Act and Standards of Business Practice, as may be amended from time to time.

January 15, 2019:

9. On about January 15, 2019, the Registrar issued a Notice of Complaint against the Dealer for failing to advertise an all-inclusive vehicle price in one advertisement. This was contrary to section 36(7) of Ontario Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics, Ontario Regulation 332/08.
10. On about December 17, 2019, the Discipline Committee issued an Order, attached hereto as Schedule "C".
11. Per condition 1 of the Order, the Dealer was fined \$2,000.

Dealer's contravention of the Code of Ethics:

13. During an inspection of the Dealer on or about September 22, 2021, the following areas of non-compliance were discovered:

Unregistered salespeople:

14. Between on or about July 8, 2021 and on or about September 2, 2021, Bilal Javed ("Javed") leased the following vehicles to customers on behalf of the Dealer despite not being registered as a salesperson under the Act:

- a. [WITHDRAWN]
- b. July 26, 2021: 2021 Nissan Infiniti (VIN JN8AZ2AC5M9475745)
- c. August 14, 2021: 2020 Nissan Infiniti (VIN 5N1DL0MM9LC546378)
- d. August 19, 2021: 2021 Infiniti (VIN JN1EV7BR3MM751607)
- e. September 2, 2021: 2021 Infiniti (VIN JN8AZ2AE0M9273753)

This was contrary to section 4(3) of the Act, as well as section 9 of the Code of Ethics, Ontario 332/08.

15. On or about October 20, 2020, Javed was first registered as a salesperson to the Dealer. On or about July 11, 2021, Javed's registration lapsed due to a failure to renew. On September 22, 2021, Javed had applied for registration. On or about October 13, 2021, Javed was granted registration.

16. Between on about August 3, 2021 and on or about August 30, 2021, Raj Batra sold or leased the following vehicles to customers on behalf of the Dealer despite not being registered as a salesperson under the Act:

- a. August 3, 2021: 2020 Infiniti (VIN 5N1DL0MM1LC548089)
- b. August 10, 2021: 2021 Infiniti (VIN 3PCAJ5BB4MF121781)
- c. August 20, 2021: 2017 Infiniti (VIN 5N1DL0MM4HC513439)
- d. August 30, 2021: 2017 Infiniti (VIN JN1BJ0RR6HM412227)

Javed was the Dealer's representative in regard to these vehicle trades, despite also not being registered under the Act. This was contrary to section 4(3) of the Act, as well as section 9 of the Code of Ethics, Ontario 332/08.

All-in pricing violations:

17. Between on or before August 25, 2021, and on or before September 3, 2021, the Dealer advertised a number of vehicles but failed to include the \$10 OMVIC fee in the advertised price. This was contrary to section 36(7) of Ontario Regulation 333/08 as well as sections 4 and 9 of the Code of Ethics, Ontario Regulation 332/08.

Faheem's contravention of the Code of Ethics:

18. As the person in charge of the day-to-day activities of the Dealer, Faheem failed to ensure that the Dealer conducted its business in compliance with the Act, Regulations, and Code of Ethics. As such, Faheem personally contravened sections 6 and 9 of the Code of Ethics, Ontario Regulation 332/08.

Generally:

19. The Dealer has since advised it has acquired human resources software equipped with features that should assist in ensuring salespeople will not be trading with a lapsed or otherwise invalid OMVIC license.
20. The Dealer has since advised it has developed an internal audit process to ensure all-in pricing issues will not arise moving forward.

Professionalism:

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

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.

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

Joint Submission on Penalty

The JSOP at Exhibit 3 states as follows:

1. The Dealer agrees to pay a fine in the amount of \$20,000 no later than **March 31, 2023.**
2. Faheem agrees to pay a fine in the amount of \$3,500 no later than **March 31, 2023.**
3. Faheem agrees to successfully complete the Automotive Certification course (the "Course"), no later than **March 31, 2023.**
4. 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 **January 30, 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.

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

Reasons for Decision

The Panel accepted the ASF and was satisfied that the evidence it contained established the breaches as admitted by the parties. The Dealer and Registrant were honest about their mistakes and the Panel accepts that they have addressed the origins of the errors to prevent recurrence.

The JSOP falls within a range of outcomes in other similar matters. Based on cases presented by the parties, breaches of all in advertising rules have resulted in fines ranging from \$1,500 on the low end to \$12,000 on the higher end, depending on the applicable mitigating and aggravating factors and the particular facts. In this matter there are prior discipline orders which militate in support of a heightened penalty. The Panel also takes the three (3) prior discipline orders outlined in paragraphs 1 – 11 of the ASF very seriously. This was not the first time this Dealer has been found to have unregistered salespersons trading or all-inclusive pricing infractions. Mr. Faheem was not employed by the Dealer at the time of the July 16, 2014, or February 12, 2015, orders. He was however, employed at the time of the 3rd breach, which resulted in the order dated January 19, 2019.

That said, as noted above, the Panel acknowledges that the Dealer and Registrant were honest about the errors that occurred in this complaint and negotiated a resolution which saves everyone the time and cost of having a contested hearing. Mr. Faheem and the Dealer each took accountability and action. The Dealer took proactive steps to rectify the origin of the pricing error and Mr. Faheem took further proactive steps to address the licensing errors to avoid this type of

error from occurring again. As set out in the ASF at paragraphs 19-20, the Panel understands that the Registrant and Dealer have implemented both a software system with automated reminders and audit practices to ensure that pricing errors and license renewal issues do not continue to occur.

The JSOP is proportionate to the misconduct found in this case. In its totality, the resulting order meets the objectives of penalty, which include specific and general deterrence, rehabilitation where appropriate, transparency, accountability, and public protection. The Panel also notes the high threshold for rejecting a joint submission as confirmed in *Timothy Edward Bradley v. Ontario College of Teachers, 2021 ONSC 2303*:

Any disciplinary body that rejects a joint submission on penalty must apply the public interest test and must show why the proposed penalty is so “unhinged” from the circumstances of the case that it must be rejected.

The JSOP is not unhinged from the circumstances of this case. It specifically adverts to the prior breach orders and the resulting fine is in the high range. It goes without saying however that these problems must not persist with these registrants. Any further breaches should be expected to be met with even more onerous penalty orders.

I, Caroline Brett, sign this decision and reasons for the penalty on behalf of the members of the Discipline Panel as set out below.



Ms. Caroline Brett

Date: March 2, 2023

Panel Members:

Ms. Caroline Brett, Chair
Mr. Wally Pietraszko, Vice Chair
Mr. Joe Wade, Vice Chair