

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 -

263666 INVESTMENTS LIMITED o/a PEPE AUTO SALES & LEASING

- AND -

DONATO PEPE

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 11, 2015

Findings: Breach of Sections 7 and 9 of the Code of Ethics

Order:

1. The Dealer is ordered to pay a fine in the amount of \$6,000. \$1,500 of the fine will be paid within 30 days of the date of the Discipline Committee Order. The remaining \$4,500 will be paid within 360 days of the date of the Discipline Committee Order.
2. Pepe is ordered to complete the OMVIC certification course ("course"), within 120 days of the date of the Discipline Committee Order. The Dealer will pay all costs associated with this.
3. The Dealer is ordered to offer all future sales staff the opportunity to complete the course. Current sales staff will be offered the course within 120 days of acceptance of this offer. Future sales staff will be offered the course within 120 days of being retained in this capacity by the Dealer. The Dealer will pay 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.
4. The Dealer and Pepe shall comply with the *Motor Vehicle Dealers Act, 2002* 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. 263666 Investments Limited o/a Pepe Auto Sales & Leasing (the "Dealer") was first registered as a motor vehicle dealer in or around November 1990. Donato Pepe ("Pepe") was first registered as motor vehicle salesperson in or around January 1981. At all material times, Pepe was the sole officer and director of the Dealer.
2. During an inspection of the Dealer on or about July 23, 2009, a representative of the Registrar met with Pepe on behalf of the Dealer. At this time the representative reviewed the Dealer's obligations to disclose, in writing on the bill of sale, material facts about a vehicle, including but not limited to, insurance write-offs, salvage, and accident repair histories.
3. In the winter of 2008 and the spring of 2009, 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. In addition to this, dealers were reminded of their obligation to provide consumers with written disclosure of vehicle's history and condition, such as accident repair histories and previous out of province registrations.
4. Once the Act came into effect, the following Dealer Standard publications further reminded dealers of their obligations to provide consumers with written disclosure of vehicle's history and condition, such as accident repair histories and previous out of province registrations:
 - a. Summer 2011
 - b. Summer 2012
 - c. Winter 2013
 - d. Fall 2013
5. Furthermore, OMVIC issued the following dealer bulletins which also reminded dealers of their obligations to provide consumers with written disclosure of vehicle's history and condition, such as accident repair histories and previous out of province registrations.
 - a. December 2008
 - b. January 2010
 - c. September 2012
 - d. December 2013



6. During an inspection of the Dealer on or about November 29, 2011, a representative met with Pepe on behalf of the Dealer. At this time the representative once again reviewed the Dealer's obligations to disclose, in writing on the bill of sale, material facts about a vehicle, including but not limited to, insurance write-offs, salvage, and accident repair histories as per section 42 of Regulation 333/08.
7. By letter dated March 26, 2012, the Dealer was again reminded of its obligations to provide purchasers with written disclosure on the bill of sale of all about material facts of a vehicle, including but not limited to, accidents exceeding \$3,000.00 and previous out of province registrations. At this time the Dealer was also provided with relevant sections of Regulation 333/08.

Material Fact Non-Disclosure:

Retail

8. On or about May 29, 2013, the Dealer purchased a 2004 Mazda 3 (VIN JM1BK143X41143096), with the following declarations:
 - a. Branded salvage
 - b. Total loss by the insurer
 - c. Manufacturer's warranty has been cancelled
 - d. Repair estimate of \$4,684

On or about July 30, 2013, the Dealer sold this vehicle without providing the purchaser with written disclosure of b, c, d, above. This is contrary sections 42(19), 42(20), and 42(21) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. The Dealer has subsequently disclosed b, c, and d to the purchaser.

9. On or about June 2013, the Dealer purchased a 2000 Ford F-150 (VIN 2FTRX17L3YCA24368), declared as an accident repaired vehicle. On or about July 3, 2013, the Dealer sold this vehicle without providing the purchaser with written disclosure of the vehicle's \$4,721 accident repair history. This is contrary to section 42(19) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. The Dealer has subsequently provided confirmation that the purchaser was aware of the vehicle's accident repair history at the time of purchase.
10. On or about June 3, 2013, the Dealer purchased a 2009 Pontiac G6 (VIN 1G2ZG57B794178294). This vehicle was previously registered in Quebec. On or about June 3, 2013, the Dealer sold this vehicle without providing the purchaser with written disclosure of the vehicle's out of province history. This is contrary to section 42(22) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. The Dealer has subsequently disclosed the vehicle's out of province history to the purchaser.
11. On or about November 28, 2012, the Dealer purchased a 2002 Pontiac Montana (VIN 1GMDU03E22D322191). This vehicle is an accident repaired vehicle. On or about December 10, 2012, the Dealer leased this vehicle without providing the lessee with written disclosure of the vehicle's \$4,975 accident repair history. This is contrary to section 42(19) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. The Dealer has subsequently provided confirmation that it has attempted to contact the purchaser to inform them of the vehicle's accident repair history.
12. On or about December 22, 2012, the Dealer purchased a 2003 Volkswagen Jetta (VIN 3VWSP29M83M162186). This vehicle is an accident repaired vehicle. On or about



January 6, 2013, the Dealer leased this vehicle without providing the lessee with written disclosure of the \$7,059 accident repair history. This is contrary to section 42(19) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. The Dealer has subsequently disclosed the vehicle's accident repair history to the purchaser.

Wholesale

13. In or between June 29, 2013 and July 15, 2013, the Dealer purchased a number of vehicles declared as accident repaired and with out of province history. The Dealer sold these vehicles without providing the purchasers with written disclosure of the vehicles' accident repair history and out of province history. This is contrary to sections 5, 7, and 9 of the Code of Ethics. The Dealer has subsequently disclosed the vehicles' accident repair history and out of province history to the purchasers.

By failing to comply with the following regulation under the *Motor Vehicle Dealers Act, 2002, 333/08*:

Disclosure

Section 42.

(19) If the total costs of repairs to fix the damage caused to the motor vehicle by an incident exceed \$3,000, a statement to that effect and if the registered motor vehicle dealer knew the total costs, a statement of the total costs.

(20) If the manufacturer's warranty on the motor vehicle was cancelled, a statement to that effect.

(21) If the motor vehicle was declared by an insurer to be a total loss, regardless of whether the vehicle was classified as irreparable or salvage under section 199.1 of the *Highway Traffic Act*, a statement to that effect.

(22) If a motor vehicle previously received treatment in an jurisdiction other than Ontario that was the equivalent to having a permit issued under section 7 of the *Highway Traffic Act* or having been traded in Ontario, a statement to that effect and a statement of which jurisdictions, except if one or more permits have been issued for the vehicle under section 7 of that Act to cover at least seven previous consecutive years.

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

5. A registered motor vehicle dealer who enters into a contract to sell or lease a motor vehicle to a person who is also a registered motor vehicle dealer shall ensure [...] information is disclosed in the contract.

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

1. The Dealer agrees to pay a fine in the amount of \$6,000. \$1,500 of the fine will be paid within 30 days of the date of the Discipline Committee Order. The remaining \$4,500 will be paid within 360 days of the date of the Discipline Committee Order.
2. Pepe agrees to complete the OMVIC certification course ("course"), within 120 days of the date of the Discipline Committee Order. The Dealer will pay all costs associated with this.
3. The Dealer agrees to offer all future sales staff the opportunity to complete the course. Current sales staff will be offered the course within 120 days of acceptance of this offer. Future sales staff will be offered the course within 120 days of being retained in this capacity by the Dealer. The Dealer will pay 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.
4. The Dealer agrees to comply with the *Motor Vehicle Dealers Act, 2002* 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 Pepe breached subsections 7 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 \$6,000. \$1,500 of the fine will be paid within 30 days of the date of the Discipline Committee Order. The remaining \$4,500 will be paid within 360 days of the date of the Discipline Committee Order.
2. Pepe is ordered to complete the OMVIC certification course ("course"), within 120 days of the date of the Discipline Committee Order. The Dealer will pay all costs associated with this.
3. The Dealer is ordered to offer all future sales staff the opportunity to complete the course. Current sales staff will be offered the course within 120 days of acceptance of this offer. Future sales staff will be offered the course within 120 days of being retained in this capacity by the Dealer. The Dealer will pay 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.



4. The Dealer and Pepe shall comply with the *Motor Vehicle Dealers Act, 2002* and Standards of Business Practice, as may be amended from time to time.

Ontario Motor Vehicle Industry Council
Discipline Committee



Catherine Poultney, Chair

