

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 -

AMANA FINE TRANSPORT LTD.

- and -

MUSTAPHA RAMADAN

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 16, 2020

Findings: Breach of Sections 6, 7 and 9 of the Code of Ethics

Order:

1. The Dealer is ordered to pay a fine in the amount of \$2,500. \$1,000 is due no later than **April 6, 2020**. The remaining balance (\$1,500) is due no later than **January 8, 2021**.
2. Ramadan is ordered to successfully complete the MVDA Key Elements course no later than **April 6, 2020**
3. The Dealer is ordered to offer all current and future sales staff the opportunity to complete Automotive Certification course (the "Course"). Current sales staff will be offered the Course no later than **April 6, 2020**. 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.

4. The Dealer and Ramadan agree 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. Amana Fine Transport Ltd (the "Dealer") was first registered as a motor vehicle dealer in around July 2016. Mustapha Ramadan ("Ramadan") was first registered as a motor vehicle salesperson in around July 2016. At all material times, Ramadan was the sole officer, as well as the person in charge of the day to day activities of the Dealer.
2. On or about January 14, 2016, Ramadan successfully completed the Automotive Certification course (the "Course"). The following is included in the Course materials:
 - a. How to properly document consignment sales.
 - b. What information concerning a vehicle's accident repair history must be disclosed in writing to purchasers ("disclosure").
3. On or about June 27, 2016, Ramadan executed terms and conditions of registration on behalf of the Dealer.
4. As per condition 1, the Dealer agreed to comply with the Code of Ethics and Standards of Business Practice, as may be amended from time to time.
5. As per condition 18, the Dealer agreed to provide purchasers with written disclosure, on the bill of sale, of all material facts about the vehicles it sells.

OMVIC publications:

6. Since the Dealer and Ramadan have become registrants, OMVIC has issued the following publications reminding dealers of their disclosure obligations:
 - a. Dealer Standard: Issue #4 2016
 - b. Dealer Standard: Issue #3 2017



Direct correspondence with Dealer:

7. During an inspection of the Dealer on or about October 12, 2017, a representative of the Registrar reviewed with Ramadan the Dealer's disclosure requirements.

Dealer non-compliance:

8. During an inspection on about May 2, 2019, a representative of the Registrar found the following non-compliant trades:

Consignment sale:

- a. On or about October 4, 2018, the Dealer sold a 2007 Cadillac Escalade (VIN 1GYFK638X7R143014) on consignment without having a written consignment agreement in place with the consignor. This is contrary to section 45(1) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. Moreover, the Dealer failed to hold the funds from this trade in a trust account, contrary to section 58(5) of Regulation 333/08, as well as section 9 of the Code of Ethics.

Disclosure:

- b. On or about October 30, 2018, the Dealer purchased a 2010 Ford Fusion (VIN 3FADP0L35AR212564) declared has having sustained structural damage. On or about November 13, 2018, Ramadan sold this vehicle on behalf of the Dealer. The Dealer disclosed the dollar amount of the damage the vehicle had incurred but failed to disclose it had sustained structural damage. This is contrary to the Dealer's terms of and conditions of registration, sections 42(10) and 42(25) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. The Dealer has since provided OMVIC with confirmation from the purchaser they were aware of their vehicle's history at the time of purchase.
 - c. On or about November 20, 2018, the Dealer purchased a 2019 Mini Cooper (VIN WMWXP5C3XH3C64348). This vehicle had sustained \$10,849 in accident damage. On or about November 20, 2018, Ramadan sold this vehicle on behalf of the Dealer without disclosing the vehicle's accident repair history. This is contrary to the Dealer's terms of and conditions of registration, sections 42(19) and 42(25) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. The Dealer has since provided OMVIC with confirmation from the purchaser they were aware of their vehicle's history at the time of purchase.
9. Ramadan's conduct with respect to the above referenced vehicle trades has caused the Dealer to contravene the Act, Regulations, and Code of Ethics. As such, Ramadan has personally contravened sections 6 and 9 of the Code of Ethics.



By failing to comply with the following sections of the *Motor Vehicle Dealers Act, 2002*:
Regulation 333/08:

42. Additional information in contracts of sale and leases:

(10) 10. If there has been structural damage to the motor vehicle or any repairs, replacements or alterations to the structure of the vehicle, a statement to that effect.

(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.

(25) Any other fact about the motor vehicle that, if disclosed, could reasonably be expected to influence the decision of a reasonable purchaser or lessee to buy or lease the vehicle on the terms of the purchase or lease.

45. Consignment sales:

(1) A registered motor vehicle dealer shall not enter into a consignment contract for the sale of a motor vehicle, whether or not the consignor is a registered motor vehicle dealer, unless the contract is in writing.

58. Trust accounts:

(5) For the purposes of clause 25 (b) of the Act, if a registered motor vehicle dealer receives amounts from a purchaser towards the purchase of a motor vehicle being sold on consignment and if subsection 45 (4) of this Regulation applies to the sale, the dealer shall hold the amounts in trust until the purchase is concluded.

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

Compliance:

7. (1) 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.

It is thereby agreed that Ramadan has breached 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.



It is thereby agreed that the Dealer and Ramadan have breached the following:

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.

Joint Submission on Penalty

1. The Dealer agrees to pay a fine in the amount of \$2,500. \$1,000 is due no later than **April 6, 2020**. The remaining balance (\$1,500) is due no later than **January 8, 2021**.
2. Ramadan agrees to successfully complete the MVDA Key Elements course no later than **April 6, 2020**
3. The Dealer agrees to offer all current and future sales staff the opportunity to complete Automotive Certification course (the "Course"). Current sales staff will be offered the Course no later than **April 6, 2020**. 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.
4. The Dealer and Ramadan agree 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 6, 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 \$2,500. \$1,000 is due no later than **April 6, 2020**. The remaining balance (\$1,500) is due no later than **January 8, 2021**.
2. Ramadan is ordered to successfully complete the MVDA Key Elements course no later than **April 6, 2020**



3. The Dealer is ordered to offer all current and future sales staff the opportunity to complete Automotive Certification course (the "Course"). Current sales staff will be offered the Course no later than **April 6, 2020**. 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.
4. The Dealer and Ramadan agree 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

