

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

PANEL:	Caroline Brett Jon Lemaire Glen Fenwick	Chair, Public Member Registrant Registrant
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DECISION AND REASONS

IN THE MATTER OF A DISCIPLINE HEARING HELD PURSUANT TO THE MOTOR
VEHICLE DEALERS ACT 2002

B E T W E E N:

Appearances¹:

**REGISTRAR, MOTOR VEHICLE
DEALERS ACT, 2002**

Diana Mojica
for the Registrar

- and -

**TORONTO SMART CARS LTD.
O/A CARHUB NORTH YORK
CHRYSLER/ NATIONAL AUTO
SHIELD WARRANTY**

David Conklin
for the Registrants

- and -

MASSOUD JAMALI

Hearing Date: January 17, 2022

Date of Decision: May 31, 2022

¹ Independent legal counsel to the Panel is Edward Marrocco.

DECISION AND REASONS ON ORDER

Introduction

This matter proceeded by videoconference before a panel of the Discipline Committee (the “**Panel**”) of the Ontario Motor Vehicle Industry Council (“**OMVIC**”) pursuant to section 17 of the Motor Vehicle Dealers Act, 2002 (“**MVDA**”). A three-day hearing was convened on October 22-23 and 30, 2020 (the “**Merits Hearing**”) regarding allegations contained in a Notice of Complaint, dated January 30, 2019 (the “**Notice of Complaint**”). The allegations were made against Toronto Smart Cars Ltd. o/a Carhub North York Chrysler/National Auto Shield Warranty (the “**Dealer**”) and Mr. Massoud Jamali (the “**Registrant**” or “**Mr. Jamali**”).

On October 21, 2021, the Panel released its decision further to the Merits Hearing and made findings against both the Registrant and the Dealer (the “**Merits Decision**”).

On January 17, 2022, a further videoconference was convened during which the parties delivered oral evidence and submissions on the issue of what order would be appropriate with respect to penalty further to the Merits Decision. These are the reasons and decision of the Panel with respect to that order.

Position of the Registrar on Penalty

The Registrar argued that an appropriate penalty in this matter required the imposition of a fine on both the Dealer and the Registrant in his personal capacity. The Registrar sought a fine of \$3,000 payable by the Registrant and \$5,000 payable by the Dealer.

The Registrar asked the Panel to order the Dealer to ensure that all its current sales staff have reviewed the 2017 OMVIC Webinar on Advertising and to direct the Dealer to return a written confirmation of completion to the Registrar accordingly. The Panel understands that this request was not opposed by the Dealer. The Registrar also requested an order that the Dealer offer to fund completion of the OMVIC Certification Course to all current sales staff who wish to take it and who have not already completed the course. The Registrar also asks that the Dealer ensure that all future sales staff are offered the course within 90 days of being employed by the Dealer.

In support of its position with respect to fines, the Registrar relied on the specific breaches found in the Merits Decision. Counsel noted that findings of breaches of the Code of Ethics were made against both the Dealer and against Mr. Jamali by way of his position as “Person in Charge” of the Dealer at the material time. The Registrar emphasized that the absence of any finding of intention on the part of the Dealer or Registrant should not materially diminish the penalty which would otherwise follow. The Registrar encouraged the Panel to focus on the breaches that had been established and make an order accordingly. On the question of the amount of any fine, the Registrar offered a selection of applicable case law and submitted that there was a range of amounts established in other cases which was available to guide the Panel.

Position of the Registrant and Dealer on Penalty

The Registrant and Dealer submitted that fines are not required in this matter. They argued that the Panel can make an order confirming and directing the requisite

commitment of the Dealer and Registrant to adhere to the Code of Ethics and that such an order will satisfy the objectives of penalty.

In the alternative, if the Panel was persuaded to impose a fine, the Registrant and Dealer argued that any fine should be in the low end of the appropriate spectrum and payable by the Dealer only, not the Registrant.

In support of this position, the Registrant and Dealer argued that the error in this matter occurred within the Dealer. More specifically, they submitted that the Registrant did not cause the pricing error at issue and should accordingly not be personally liable to pay any fines. The Registrant and Dealer argued that the findings in this matter arise out of nothing more than an administrative error. They argued that the breaches here all occurred innocently and that the party who in fact committed the main error was a sales manager of the Dealer, not the Registrant himself. They also maintained there was no “intent” behind the conduct and for that reason, that there were no aggravating factors. They noted that there was no suggestion in the Merits Decision that this Panel found any deliberate conduct and they submitted that the administrative error in this matter did not rise to the level of negligence.

No Costs

Neither party made submissions on the issue of costs. The Panel concludes that no costs are being sought and, accordingly, no order is made as to costs.

Evidence of the Registrant and Dealer

The Registrant and Dealer tendered evidence from three witnesses at the penalty hearing.

Peiman Safaei

Mr. Safaei had testified at the Merits Hearing as well. He continues to be the Sales Manager at Caledon Chrysler.

In testifying at the Merits Hearing, Mr. Safaei had confirmed that he oversaw the pricing of new cars for both Caledon Chrysler and the Dealer. He also verified that he priced the 2018 Dodge Ram at issue and had wrongly included the \$1,500 Dodge Ram loyalty discount in the advertised price.

During the penalty hearing Mr. Safaei again confirmed that he was responsible for the mistake, but he went on to say that the error has troubled him. As a result, he outlined the steps that have been taken at the Dealer to update pricing procedures to ensure that the issue which arose in this case does not happen again.

He explained that a new policy and process has been put in place which should ensure that pricing is reviewed more times prior to advertising and that these extra layers of review should prevent any price that is not available to all potential buyers from being listed. The new procedure begins with Mr. Jamali directing the margin of profit he wants obtained on a vehicle. Mr. Safaei then works backwards to set out how that pricing will be achieved. The pricing is done all in one day to avoid oversights or distractions. Mr.

Safaei then diligently reviews any applicable rebate programs, confirms a proposed listing price, and returns the price back to Mr. Jamali for final approval. This requirement for more comprehensive consultation on pricing means that no vehicle price will ever be set without at least two individuals vetting it. In any cases where rebate or discount programs are being used, emails will be circulated to staff explaining the details of each program. Mr. Safaei expects this will minimize the risk of a miscommunication to a member of the public during a vehicle sale. Mr. Safaei confirmed that even the discount and rebate programs will be double checked by others before he returns a proposed sale price to Mr. Jamali. Mr. Safaei testified that he is confident this new two-step process will prevent recurrence of what happened in this matter. Counsel for the Registrar had no cross-examination for Mr. Safaei.

Erfan Afshar

Mr. Afshar has been the Director of Operations at the Dealer since September 2020. He provided additional testimony about new policies and procedures at the Dealer building on the evidence of Mr. Safaei.

Mr. Afshar explained that the Dealer has added layers of review to pricing, auditing, and rebate application to ensure issues regarding pricing of vehicles are identified before a vehicle is advertised to the public. He himself monitors the fine print and disclosure closely and communicates with OMVIC to obtain clarity as necessary.

Mr. Afshar emphasized the high value he places on proper regulatory compliance. He explained that there are now two management sessions every week where regulations are reviewed and shared with the sales staff. He testified that he is confident the Dealer is transparent and upfront with customers and that every relevant detail about a vehicle is accurate and available to customers before they come to the dealership. Counsel for the Registrar had no cross-examination for Mr. Afshar.

Massoud Jamali

Mr. Jamali is the respondent individual Registrant in this matter. He testified at the Merits Hearing and again at the penalty hearing.

Mr. Jamali emphasized that the culture at the Dealer is based on principles of transparency and integrity. At the penalty hearing, he testified that he has found the hearing process to be upsetting and that he takes the issues identified very seriously. Mr. Jamali emphasized importance of exceeding OMVIC requirements. He explained that from his perspective, being upfront and transparent with customers is integral to maintaining a positive professional reputation both personally and as a Dealer.

Mr. Jamali confirmed Mr. Ashfar's evidence that new procedures and extra layers of review have been implemented in the pricing process. Mr. Jamali was unequivocal that all prices now advertised at the Dealer reflect prices only available to every potential consumer. Counsel for the Registrar had no cross-examination for Mr. Jamali.

Decision of the Panel

The Panel makes the following order:

1. The Dealer shall pay a fine in the amount of \$5,000.00 by no later than July 15, 2022.
2. The Dealer will confirm in writing to OMVIC, by no later than August 15, 2022, that all current sales staff have completed the 2017 OMVIC Webinar on Advertising.
3. The Dealer shall offer to fund the OMVIC Certification Course for any current staff, and any future sales staff who wish to take it. Current staff will be offered the course by no later than August 1, 2022 or by a later date as may be agreed between the Dealer and the Registrar. Future sales staff will be offered the course within 90 days of being employed by the Dealer. This shall not apply to individuals who have completed the course after January 1, 2009.
4. The Dealer and the Registrant shall comply with the Act and the Code of Ethics as well as OMVIC published Standards of Business Practice, as they may be amended from time to time.

Reasons for Decision

An appropriate penalty must serve to protect the public. In doing so, it should contemplate both specific/general deterrence and enable remediation/rehabilitation, when reasonably possible. An appropriate penalty must not be disproportionately harsh or a mere slap on the wrist.

The Panel has reviewed previous cases referenced by the parties, considered the submissions of counsel and also notes the remedial steps proactively taken by Mr. Jamali, and the Dealer. The Panel is satisfied that the penalty in this matter is appropriate.

First and foremost, the penalty in this case falls within a range of outcomes in other similar matters. Based on cases presented by the parties, breach of all in advertising rules can result in fines ranging from \$7500 to \$17500 on the high end² to \$1,000 to \$5,000 on the lower end³ depending on the applicable mitigating and aggravating factors and the particular facts.

There are no prior discipline findings against Mr. Jamali or the Dealer. This is a breach of all in advertising rules which arises out of a known issue that occurs when OEMs offer incentives which may not comply with OMVIC regulations, or which may create confusion on the part of dealers with respect to how they are applied.

The Dealer and Registrant and their employee witnesses were honest about the error that occurred in this case. They testified candidly and openly about how a problematic OEM incentive made its way into one of their online advertisements. Evidence at the Merits Hearing even confirmed that the Dealer proactively withdrew from the website service from which the pricing error originated. Mr. Jamali then subsequently took further proactive steps to address the pricing error and the parties came back before the Panel on penalty able to provide detailed evidence about how they will avoid this type of error from occurring again. The Registrant and Dealer have also put in a multi-step process to catch potential errors going forward and implemented salesperson training to

² See for example, cases relied upon by counsel for the Registrar such as *OMVIC v. East Court Ford Lincoln Sales Ltd and Punit "Prince" Sibal* [August 30, 2018] and *OMVIC v. 1681230 Ontario Inc o/a Windsor Chrysler and Joseph Diemer* [July 10, 2020].

³ See for example, cases relied by counsel for the Dealer and Registrant such as *OMVIC v. O'Neil Motors Inc and Andrew O'Neil* [January 10, 2022] and *OMVIC v. V.I.N. Trading Inc o/a Cardealsdirect and Aliaksandr Kaliada and Alexey Malakhov* [January 10, 2022] and *OMVIC v. 7092226 Ontario Limited o/a Dilawri Jeep Dodge Chrysler and Shiv Dilawri*. [December 2, 2021]

ensure that what happened is highlighted and lessons are learned accordingly. Given the proactive steps that the Dealer and Registrant have already taken, the Panel is satisfied that provisions 2 and 3 of the above Order are all that is required with respect to matters of further staff training.

There was no cross-examination on any of the evidence given at the penalty hearing. The Panel takes this to mean that there is no question about its accuracy or veracity and so the Panel accepts the evidence tendered on penalty accordingly.

Despite the proactive steps taken, a fine is warranted in this case. What happened here was not insignificant, even though it was clearly unintentional. A member of the public, Mr. Cairns, was drawn to a dealer after relying on an online advertisement which did not comply with the “all in pricing” rules. Mr. Cairns was told that he didn’t qualify for an advertised discount and purchased the vehicle, nonetheless. However, he testified that he had a negative experience as a direct result of the confusion. The experience left a negative impression of the industry on Mr. Cairns and negatively affected his ability to enjoy his new vehicle. The Dealer’s error had consequences and the Dealer is fined accordingly. The amount ordered is commensurate with the seriousness of the error and considers the negative experience that Mr. Cairns endured.

With respect to Mr. Jamali personally, the Panel is not persuaded that he should pay a personal fine simply because he was the “Person in Charge” of the Dealer at the material time. In other cases, it may be appropriate to order a fine on a “Person in

Charge”, but not in this one. In addition to being entirely cooperative and proactive in addressing the breaches, Mr. Jamali himself played no direct role in what transpired with Mr. Cairns, and he was not involved with the online advertisement at issue. The Dealer clearly had a process for pricing vehicles in place which was being handled by a management level employee. That process likely needed reform, and apparently has been reformed. The evidence the Panel received confirmed that Mr. Jamali was a driving force of that policy reform. Despite that he did breach the Code by failing to catch the issue before it arose, Mr. Jamali was ultimately part of the solution in this particular case, not the problem.

The Panel wants to emphasize that this decision should not be misinterpreted as suggesting that in all cases a “Person in Charge” of a Dealer can only be personally fined if they are shown to have direct involvement in the underlying misconduct. In this specific case, the Panel is satisfied that the goal of public protection and the principles of penalty do not support the imposition of a fine on Mr. Jamali personally.

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



Caroline Brett

Date: May 31, 2022

Panel Members:

Caroline Brett
Jon Lemaire
Glen Fenwick