

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 -

1070604 ONTARIO LIMITED o/a FINE CARS MOTORS

- AND -

NOBAR ZAKARIAN

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: November 3, 2015

Findings: Breach of Sections 4 and 9 of the Code of Ethics

Order:

1. The Dealer is ordered to pay a fine in the amount of \$4,000. \$1,000 to be paid within 90 days of the date of the Discipline Committee Order and the remaining \$3,000 within 180 days of the date of the Discipline Committee Order.
2. Zakarian is ordered to successfully complete the OMVIC certification course (the "course") within 90 days of the date of the Discipline Committee Order.
3. 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 of be 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 shall 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. 1070604 Ontario Limited o/a Fine Cars Motors (the "Dealer") was first registered as a motor vehicle dealer in or around January 2011. Nobar Zakarian ("Zakarian") was first registered as a motor vehicle salesperson in or around January 2011. At all material times Zakarian was registered as officer and director 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, including the requirement for dealers to disclose previous accident history.
3. OMVIC issued the following Dealer Standard publications reminding dealers of their obligations to provide consumers with written disclosure of vehicle's history and condition, such as accident histories and previous out of province registrations:
 - a. Summer 2011
 - b. Summer 2012
 - c. Winter 2013
 - d. Fall 2013
4. 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 histories and previous out of province registrations:
 - a. January 2010
 - b. September 2012
 - c. December 2013
 - d. December 2014

Previous Correspondence with Dealer:

5. On or about May 18, 2011, a representative of the Registrar reminded the Dealer of his responsibility to disclose a vehicle's history clearly and prominently on retail bills of sale.
6. During an inspection of Fine Cars Motors on or about May 29, 2015, the following non-compliance issues were discovered:



Non-Disclosure:

7. On or about April 19, 2013 the Dealer purchased a 2012 Chevrolet Orlando, VIN (KL77P2EM7CK550688), with the following declarations:
 - a. Vehicle has been declared a total loss by the insurer
 - b. The manufacturer's warranty has been cancelled
 - c. Repair Estimate: \$12,643.03

On or about July 14, 2014 the Dealer sold the vehicle without disclosing a, b and c on the retail bill of sale. This is contrary to section 42(19), (20), (21) and (25) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. The Dealer has since provided confirmation that the consumer was aware of the vehicle history at the time of purchase.

8. On or about April 25, 2013 the Dealer purchased a 2010 Dodge Avenger R/T, VIN (1B3CC5FB9AN188310), with the following declarations:
 - a. Vehicle has been declared a total loss by the insurer
 - b. The manufacturer's warranty has been cancelled
 - c. Repair Estimate: \$12,782.27

On or about August 22, 2014 the Dealer sold the vehicle without disclosing a, b and c on the retail bill of sale. This is contrary to section 42(19), (20), (21) and (25) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. The Dealer has since attempted to obtain confirmation that the consumer was aware of the vehicle history at the time of purchase.

9. On or about November 1, 2013 the Dealer purchased a 2013 Ford Focus, VIN (1FADP3F2XDL238830), with the following declarations:
 - a. Vehicle has been declared a total loss by the insurer
 - b. The manufacturer's warranty has been cancelled
 - c. Repair Estimate: \$11,828.95

On or about July 26, 2014 the Dealer sold the vehicle without disclosing a, b and c on the retail bill of sale. This is contrary to section 42(19), (20), (21) and (25) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. The Dealer has since provided confirmation that the consumer was aware of the vehicle history at the time of purchase.

10. On or about November 21, 2013 the Dealer purchased a 2011 Dodge Journey, VIN (3D4PG5FG1BT541501), with the following declarations:
 - a. Vehicle has been declared a total loss by the insurer
 - b. The manufacturer's warranty has been cancelled
 - c. Repair Estimate: \$20,533.79

On or about June 10, 2014 the Dealer sold the vehicle without disclosing a, b and c on the retail bill of sale. This is contrary to section 42(19), (20), (21) and (25) of Regulation



333/08, as well as sections 7 and 9 of the Code of Ethics. The Dealer has since provided confirmation that the consumer was aware of the vehicle history at the time of purchase.

11. On or about May 6, 2014 the Dealer purchased a 2009 Dodge Grand Caravan S, VIN (2D8HN44E89R695026), with the following declarations:
 - a. Vehicle has been declared a total loss by the insurer
 - b. Repair Estimate: \$13,756.39

On or about July 12, 2014 the Dealer sold the vehicle without disclosing a and b on the retail bill of sale. This is contrary to section 42(19), (21) and (25) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. The Dealer has since provided confirmation that the consumer was aware of the vehicle history at the time of purchase.

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

42. Non-Disclosure

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 as salvage under section 199.1 of the *Highway Traffic Act*, a statement to that effect.

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.

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

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 \$4,000. \$1,000 to be paid within 90 days of the date of the Discipline Committee Order and the remaining \$3,000 within 180 days of the date of the Discipline Committee Order.



2. Zakarian agrees to successfully complete the OMVIC certification course (the "course") within 90 days of the date of the Discipline Committee Order.
3. 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 of be 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 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 and Zakarian 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 \$4,000. \$1,000 to be paid within 90 days of the date of the Discipline Committee Order and the remaining \$3,000 within 180 days of the date of the Discipline Committee Order.
2. Zakarian is ordered to successfully complete the OMVIC certification course (the "course") within 90 days of the date of the Discipline Committee Order.
3. 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 of be 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 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



Catherine Poultney, Chair

