

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 -

DEAN MYERS CHEVROLET LIMITED

- AND -

ANGELO CAPOGNA

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: September 16, 2016

Findings: Breach of Sections 4, 7 and 9 of the Code of Ethics

Order:

1. The Dealer is ordered to pay a fine in the amount of \$8,000 within 90 days of the date of the Discipline Committee Order. The Dealer agrees to pay \$3,000 of the fine within 30 days of the Discipline Committee Order.
2. Capogna is ordered to successfully complete the OMVIC certification course (the "course"), in person, within 90 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 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 being retained in this capacity. 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 after January 1st, 2010, or who are otherwise required to do so pursuant to the Act.
4. The Dealer 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. Dean Myers Chevrolet Limited (the "Dealer") was first registered as a motor vehicle dealer in or around August 1991.
2. Angelo Capogna ("Capogna") was first registered as a motor vehicle salesperson in or around January 1985. At all material times, Capogna was the General Manager of the Dealer.

Direct correspondence with the Dealer

3. By e-mail dated January 27, 2010, a representative of the Registrar reminded the Dealer of their requirements to ensure and advertise all-inclusive vehicle prices, as required by subsection 36(7) of Regulation 333/08, as well as ss. 4 and 9 of the Code of Ethics.
4. By e-mail dated October 25, 2010, a representative of the Registrar reminded the Dealer of their requirements to ensure to advertise all-inclusive vehicle prices, as required by subsection 36(7) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics.
5. By e-mail dated September 30, 2011, a representative of the Registrar reminded the Dealer of their requirements to ensure to advertise all-inclusive vehicle prices, as required by subsection 36(7) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics.
6. By e-mail dated May 11, 2015, a representative of the Registrar reminded the Dealer of their requirements to ensure to advertise all-inclusive vehicle prices as required by subsection 36(7) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics.

Past Guilty Plea - Non-Compliant "All In" Advertising

7. On or about September 10, 2014, the Dealer pled guilty to one (1) count under subsection 36(7) of Regulation 333/08 of the *Motor Vehicle Dealers Act, 2002*.

Non-Disclosure of Material Facts on Consumer Bill of Sale

2011 Chevrolet Tahoe (VIN: 1GNSKCE01BR169527)

8. On or before January 14, 2015, the Dealer sold a 2011 Chevrolet Tahoe (VIN: 1GNSKCE01BR169527) to a consumer, without providing written disclosure of the



vehicle's previous out-of-province registration, as well as the vehicle's previous U.S. "Lemon/Manufacturer Buy-back" declaration. This is contrary to subsections 42 (22) and 42(25) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics.

9. The Registrar has since confirmed with the consumer that they were made aware, in writing by the Dealer, of the vehicle's previous out-of-province registration and previous U.S. "Lemon/Manufacturer Buyback" declaration after the issuance of the Notice of Complaint.

Non-Compliant "All In" Advertising

2008 GMC Acadia (VIN: 1GKEV33728J287370)

10. On or before July 9, 2015, the Dealer advertised a 2008 GMC Acadia (VIN: 1GKEV33728J287370) with a selling price of \$17,995. On or about July 9, 2015, the Dealer sold this vehicle for \$440 over the advertised price and as such, the advertisement did not promote an all-inclusive price. This is contrary to subsection 36(7) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics.
11. The Dealer made full restitution to the consumer after the Notice of Complaint was issued

2008 Jeep Compass (VIN: 1J8FF4778D515634)

12. On or before August 11, 2015, the Dealer advertised a 2008 Jeep Compass (VIN: 1J8FF4778D515634) with a selling price of \$6,495. On or about August 11, 2015, the Dealer sold this vehicle for \$440 over the advertised price and as such, the advertisement did not promote an all-inclusive price. This is contrary to subsection 36(7) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics.
13. The Dealer made full restitution to the consumer after the Notice of Complaint was issued

2012 GMC Terrain (VIN: 2GKALMEKXC6239536)

14. On or before August 13, 2015, the Dealer advertised a 2012 GMC Terrain (VIN: 2GKALMEKXC6239536) with a selling price of \$18,995. On or about August 13, 2015, the Dealer sold this vehicle for \$974 over the advertised price and as such, the advertisement did not promote an all-inclusive price. This is contrary to subsection 36(7) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics.
15. The Dealer made full restitution to the consumer after the Notice of Discipline was issued



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

36. Advertising

(7) If an advertisement indicates the price of a motor vehicle, the price shall be set out in a clear, comprehensible and prominent manner and shall be set out as the total of,

- (a) the amount that a buyer would be required to pay for the vehicle; and
- (b) subject to subsections (9) and (10), all other charges related to the trade in the vehicle, including, if any, charges for freight, charges for inspection before delivery of the vehicle, fees, levies and taxes.

42. Additional information in contracts of sale and leases:

(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 Dean Myers Chevrolet Limited and Angelo Capogna have breached the following sections of the Code of Ethics, as set out in Regulation 332/08:

- 4. (2) A registrant shall ensure that all representations, including advertising, made by or on behalf of the registrant in connection with trading in motor vehicles, are legal, decent, ethical and truthful.
- 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 \$8,000 within 90 days of the date of the Discipline Committee Order. The Dealer agrees to pay \$3,000 of the fine within 30 days of the Discipline Committee Order.
2. Capogna agrees to successfully complete the OMVIC certification course (the "course"), in person, within 90 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 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 being retained in this capacity. 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 after January 1st, 2010, 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 Capogna breached subsections 4, 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 \$8,000 within 90 days of the date of the Discipline Committee Order. The Dealer agrees to pay \$3,000 of the fine within 30 days of the Discipline Committee Order.
5. Capogna is ordered to successfully complete the OMVIC certification course (the "course"), in person, within 90 days of the date of the Discipline Committee Order. The Dealer The Dealer is ordered to pay a fine in the amount of \$8,000 within 90 days of the date of the Discipline Committee Order. The Dealer agrees to pay \$3,000 of the fine within 30 days of the Discipline Committee Order.
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8. The Dealer shall comply with the *Motor Vehicle Dealers Act, 2002* and Standards of Business Practice, as may be amended from time to time.
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4. The Dealer 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



Paul Burroughs, Chair

