

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 -

OAKVILLE CHRYSLER DODGE JEEP RAM LTD.

- AND -

GORDON NIMECK

- AND -

REG NIMECK

- AND -

MOHAMMAD MINHAS

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: August 30, 2018

Findings: Breach of Sections 4, 6 and 9 of the Code of Ethics

Order:

1. The Dealer is ordered to pay a fine in the amount of \$3,500 no later than **October 1, 2018.**
2. The Dealer is ordered to offer all current and future sales staff the opportunity to complete the Automotive Certification Course. Current sales staff will be offered the course no later than **October 1, 2018.** Future sales staff will be offered the course within 90 days of being retained in this capacity by the Dealer. 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 after January 1, 2009, or who are otherwise required to do so pursuant to the Act.

3. The Dealer is ordered to ensure all sales staff employed by the Dealer have reviewed the August 2017 OMVIC advertising webinar. The Dealer will provide OMVIC with written confirmation that this has occurred, no later than **September 4, 2018**.
4. The Dealer, G. Rimeck, R. Nimeck and Minhas are ordered 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. Oakville Chrysler Dodge Jeep Ram Ltd (the "Dealer") was first registered as a motor vehicle dealer in about March 2013.
2. Gordon Nimeck ("G. Nimeck") was first registered as a motor vehicle salesperson in about March 1983. At all material times G. Nimeck was the Person in Charge of the Dealer.
3. Reg Nimeck ("R. Nimeck") was first registered as a motor vehicle salesperson in about July 1984. At all material times R. Nimeck was the Person in Charge of the Dealer.
4. Mohammad Minhas ("Minhas") was first registered as a motor vehicle salesperson on or about April 6, 2018.
5. Minhas successfully completed the Automotive Certification course on or about March 26, 2018.

OMVIC publications:

1. In or around December 2008, OMVIC issued a Dealer Standards publication advising dealers of up and coming changes to the Act. Included in the publications was the requirement for dealers to advertise all inclusive vehicle prices ("all-in pricing") in advertisements.
2. After the Act was proclaimed, OMVIC further issued the following Dealer Standard publications reminding dealers of their all-in pricing advertising obligations:

- a. Spring 2010
 - b. Summer 2010
 - c. Spring 2011
 - d. Spring 2013
 - e. Fall 2013
 - f. Issue #1
 - g. Issue #2
 - h. Issue #3 2014
 - i. Issue #4 2014
 - j. Issue #3 2015
 - k. Issue #1 2016
 - l. Issue #2 2016
 - m. Issue #3 2016
 - n. Issue #4 2016
 - o. Issue #3 2017
3. Furthermore, OMVIC issued the following dealer bulletins which also reminded dealers of their all-in pricing advertising obligations:
- a. January 2010 (2 publications)
 - b. April 2010 (2 publications)
 - c. February 2012
 - d. August 2012
 - e. April 2013
 - f. June 2014 (2 publications)
 - g. April 2015
 - h. July 2017
 - i. August 2017

Prior Discipline Decisions

4. On or about December 8, 2014, the Registrar issued a Notice of Complaint against the Dealer for failure to comply with the all-in price advertising requirements.
5. On or about March 10, 2015, the Discipline Committee issued an Order against the Dealer, pursuant to a negotiated resolution of the above referenced Notice. As per condition 4 of the Order, the Dealer agreed to comply with the Act and Standards of Business Practice, as may be amended from time to time.

Current advertising non-compliance:

1. On or before April 25, 2018 the Dealer published an advertisement for a 2017 Jeep Compass Trailhawk (VIN: 3C4NJDDDB5HT674312) with an advertised price of \$27,988.
2. On or about April 25, 2018 OMVIC representatives visited the Dealer and made inquiries about the above referenced vehicle while posing as members of the public. Minhas on behalf of the Dealer advised the OMVIC representatives that only taxes and licencing were additional.

3. The OMVIC representatives then asked if there were additional "admin fees" and Minhas on behalf of the Dealer stated there were "approximately \$800-\$900" in additional non-negotiable fees. As such, the Dealer's advertised price was not all inclusive. This is contrary to section 36(7) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics.
4. Moreover Minhas' reference to the additional fees contradicted his earlier statement that only taxes and licencing would be added to the price. This is contrary to sections 4 and 9 of the Code of Ethics.
5. Furthermore, when the representative requested a written breakdown of the vehicle price, Minhas on behalf of the Dealer stated that was not possible without a obtaining a credit card from the representative. Minhas' conduct was unprofessional, contrary to Section 9 of the Code of Ethics
6. The Dealer has failed to ensure its registered salesperson carried out his duties in compliance with the Act and Code of Ethics. This is contrary to 6 and 9 of the Code of Ethics.
7. As Persons in Charge of the Dealer, G. Nimeck, and R. Nimeck failed to ensure the Dealer's advertising, as well as its registered employees, comply with the Act and Code of Ethics. As such, they have contravened sections 4, 6, and 9 of the Code of Ethics.
8. In causing the Dealer to contravene the advertising regulations and/or Code of Ethics, Minhas has personally contravened sections 6 and 9 of the Code of Ethics.
9. The subject vehicle was subsequently wholesaled for less than the advertised price.
10. Since the issuance of the Notice of Complaint the Dealer has taken steps to ensure all sales staff understands their obligations with respect to all-in pricing regulations.

By failing to comply with the following:

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.

It is thereby agreed that the Dealer, G. Nimeck, and R. Nimeck in their capacity as Persons in Charge of the Dealer, have breached the following sections of the Code of Ethics, as set out in Regulation 332/08:

4. A registrant shall be clear and truthful in describing the features, benefits and prices connected with the motor vehicles in which the registrant trades and in explaining the products, services, programs and prices connected with those vehicles.

6 (1) A registered motor vehicle dealer shall ensure that every registered salesperson that the dealer employs or retains to act as a salesperson carries out his or her duties in compliance with this Regulation.

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.

Moreover, in causing the Dealer to contravene the advertising regulations and/or Code of Ethics, Minhas has personally contravened the following sections of the Code of Ethics, as set out in Regulation 332/08:

4. A registrant shall be clear and truthful in describing the features, benefits and prices connected with the motor vehicles in which the registrant trades and in explaining the products, services, programs and prices connected with those vehicles.

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.

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 \$3,500 no later than **October 1, 2018.**
2. The Dealer agrees to offer all current and future sales staff the opportunity to complete the Automotive Certification Course. Current sales staff will be offered the course no later than **October 1, 2018.** Future sales staff will be offered the course within 90 days of being retained in this capacity by the Dealer. 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 after January 1, 2009, or who are otherwise required to do so pursuant to the Act.
3. The Dealer agrees to ensure all sales staff employed by the Dealer have reviewed the August 2017 OMVIC advertising webinar. The Dealer will provide OMVIC with written confirmation that this has occurred, no later than **September 4, 2018.**

4. The Dealer, G. Rimeck, R. Nimeck and Minhas 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 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 \$3,500 no later than **October 1, 2018.**
2. The Dealer is ordered to offer all current and future sales staff the opportunity to complete the Automotive Certification Course. Current sales staff will be offered the course no later than **October 1, 2018.** Future sales staff will be offered the course within 90 days of being retained in this capacity by the Dealer. 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 after January 1, 2009, or who are otherwise required to do so pursuant to the Act.
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4. The Dealer, G. Rimeck, R. Nimeck and Minhas are ordered 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